

SERVED: September 9, 2010

NTSB Order No. EA-5547

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 8th day of September, 2010

<hr/>)	
J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18646
v.)	
)	
PEDRO JOSE TURMERO,)	
)	
Respondent.)	
)	
<hr/>)	

OPINION AND ORDER

Respondent and the Administrator have both appealed from the oral initial decision of Administrative Law Judge William A. Pope II in this matter,¹ issued following an evidentiary hearing held on March 30 and 31, 2010. The Administrator's order

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

suspended respondent's Airframe and Powerplant (A&P) certificate, with Inspection Authorization (IA), based on alleged violations of 14 C.F.R. §§ 43.9(a),² 43.11(a),³ 43.13(a),⁴ and 43.15(a)(1).⁵ The law judge found respondent violated the regulations, as the Administrator had alleged, but

² Section 43.9(a) states that each person who maintains, performs preventative maintenance, rebuilds, or alters an aircraft, airframe, aircraft engine, propeller, appliance, or component part shall make an entry in the maintenance record of that equipment containing the following: (1) a description of the work performed; (2) the date of completion of the work performed; (3) the name of the person performing the work; and (4) the signature, certificate number, and kind of certificate held by the person approving the work, if the work was performed satisfactorily.

³ Section 43.11(a) states that the person approving or disapproving for return to service an aircraft, airframe, aircraft engine, propeller, appliance, or component part after any inspection shall make an entry in the maintenance record of that equipment that contains the following: (1) the type of inspection and a description of the extent of the inspection; and (2) the date of the inspection and the aircraft's total time in service.

⁴ Section 43.13(a) provides as follows:

Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator.

⁵ Section 43.15(a)(1) requires each person performing an inspection required under parts 91, 125, or 135 to "[p]erform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements."

reduced the sanction from 90 to 45 days. We deny respondent's appeal and grant the Administrator's appeal.

The Administrator's July 1, 2009 order, which served as the complaint before the law judge, alleged that respondent performed maintenance on a Robinson R22 helicopter on July 12, 2008, and certified it as airworthy. The complaint stated, however, that the aircraft did not have a steel pulley installed on its alternator, as the manufacturer's maintenance manual required, and that respondent failed to verify that the aircraft complied with two applicable airworthiness directives (ADs). The complaint further alleged that, on one record, respondent listed the total time of the aircraft as 4,364.2 hours, and on a subsequent record, listed the time as 4,305.8 hours. Based on these allegations, the complaint charged respondent with violations of the four regulations cited above.

Respondent appealed the Administrator's order, and the case proceeded to a hearing before the law judge on March 30 and 31, 2010.⁶ At the hearing, the Administrator presented the testimony of Inspector Carlton Kitchen, an aviation safety and principal maintenance inspector, and Inspector Edward Loop, an aviation safety and assistant principal maintenance inspector. Inspector Kitchen testified that he initiated an inspection of Helicopters

⁶ Although respondent proceeds with counsel on appeal, he was not represented at the hearing.

of America (hereinafter, "HOA") after receiving a complaint concerning the work done at HOA. Inspector Kitchen noted "several ... items" that were unairworthy on three aircraft at HOA. Tr. at 19. The records indicated that respondent had performed work on one of the three aircraft at issue (N722HA). On N722HA, Inspector Kitchen stated that an aluminum pulley was installed on its alternator, rather than a steel pulley,⁷ and that there was no record of compliance with two ADs.⁸ Inspector

⁷ Inspector Kitchen testified that, if a steel pulley is not installed on the alternator, then the aircraft does not comply with its type design. Tr. at 34. He stated that, "[t]he 100-hour/annual inspection has embodied a step where he has to perform a check of the pulley itself by use of a magnet" (Tr. at 31), and that a steel pulley, rather than an aluminum cast pulley, is critical to the safety of the aircraft because "[c]ast aluminum is more brittle, whereas a steel pulley if it was hit by debris would absorb and not break readily, thus ... causing a failure in the electrical system" (Tr. at 28).

⁸ Inspector Kitchen identified AD 2007-26-12 and AD 88-26-01 R2. He stated that AD 2007-26-12 requires that the mechanic:

Initially, within the first 10 hours of when this AD first came out, to perform an inspection of the outboard portions of the main rotor blades for the detection of delamination. Delamination is the separation of one layer from another. With that, he's to annotate in the maintenance records what it is that he performed with the AD. And being that this is what they call a recurrent type AD, annotate when the next inspection is due. In accordance with this AD in its original form, the next inspection must be performed prior to the next flight.

Tr. at 48 (describing Exh. A-21). With regard to AD 88-26-01 R2, Inspector Kitchen testified that the AD required "inspection of the helicopter main rotor spindle after 500 times--after 500 hours time in service and every 50 hours after that." Tr. at 55 (describing Exh. A-22(a)).

Kitchen also testified that the maintenance records for N722HA showed that respondent had returned it to service on July 12, 2008. Inspector Kitchen acknowledged that he did not physically inspect N722HA until July 31, 2008, but stated that he did not see any superseding maintenance records to indicate that any work had occurred on the aircraft between July 12 and July 31. Inspector Kitchen further testified that the certificate holder is responsible for ensuring compliance with applicable ADs. Inspector Loop's testimony corroborated the testimony of Inspector Kitchen, and included a description of the aircraft's logbook, which showed the aircraft time as 4,364.2 on one page, and 4,305.8 on another. Exhs. A-9 and A-18; Tr. at 94-97. At the conclusion of the Administrator's case, the Administrator's attorney requested judicial notice of, and deference to, the Administrator's Sanction Guidance Table, FAA Order No. 2150.3B.

In response to the Administrator's case, respondent introduced his own records in which he had memorialized the work he performed for HOA. Respondent emphasized that he was not an employee of HOA and could not verify any work that HOA may have performed on N722HA. After the conclusion of the evidence, but before closing statements, respondent requested to reopen the hearing and call two witnesses, both of whom worked at HOA at the time that respondent performed the work at issue. The law judge did not allow the witnesses to testify, because respondent

did not identify them in accordance with the direction of the pre-hearing order, and because, after respondent made a proffer concerning what the witness testimony would include, the law judge determined that they would not provide anything that was not already in evidence. Tr. at 161-75.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he provided a detailed summary of the evidence presented at the hearing, and referenced previous Board cases involving maintenance violations. The law judge determined that, in this case, the Administrator provided sufficient evidence to prove all allegations of the complaint, and that, in particular, Inspectors Kitchen and Loop both provided testimony that was "entirely reliable." Initial Decision at 206. The law judge, however, reduced the sanction, and stated that the sanction guidance table "provides a wide variety of sanctions that appear to fit the violations committed by ... [r]espondent, ranging from 15 to 30-day suspensions, 60-day suspension, 60-day suspension to a revocation, and 30 to 120-day suspensions." Id. at 208. The law judge recognized that, "holders of IA are held to a higher standard of care," but noted that, in Administrator v. Scott, NTSB Order No. EA-4030 (1993), the Board affirmed a 45-day suspension for violations of 43.9(a)(2), 43.11(a), and 43.13(a). Initial Decision at 209. After the hearing, the

law judge reiterated that he analogized the case at hand with the Board's opinion in Scott. Tr. at 214-15.

Respondent's Appeal

On appeal, respondent argues that the evidence he attempted to present at the hearing established that he neither failed to inspect the pulley system on N722HA, nor failed to ensure that the aircraft complied with the applicable ADs. Respondent contends that, between July 12, 2008, and July 31, 2008, it is "quite likely" that another mechanic "may have altered or changed the pulley." Appeal Br. at 4. With regard to the ADs, respondent concedes that he did not record compliance with the ADs in the aircraft logbook, but contends that he ensured that N722HA complied with them. He further argues that the only evidence the Administrator produced concerning the ADs was testimony that there was no record of compliance.⁹ The Administrator disputes each of respondent's arguments.

We find that the evidence unequivocally establishes that respondent did not fulfill the requirements of §§ 43.9(a), 43.11(a), 43.13(a), and 43.15(a)(1). Respondent did not produce any evidence, other than his own unauthenticated documents, to dispute the Administrator's evidence that N722HA's alternator

⁹ Respondent did not provide any argument on appeal concerning the two different times listed in the logbook for N722HA, which formed the basis for the Administrator's charge that respondent violated § 43.11(a).

did not have a steel pulley installed at the time of respondent's July 12, 2008 inspection. We agree with the law judge that two relevant logbook entries existed: respondent's July 12, 2008 entry, which does not mention the pulley; and the August 1, 2008 entry, which shows that a steel pulley was placed in the aircraft. No logbook entry indicates any maintenance between July 12, 2008, and August 1, 2008, concerning the pulley. With regard to the ADs, respondent admits that he did not record that he checked N722HA for compliance with the ADs, but insists he nevertheless verified that they complied. The law judge did not believe this contention, and on appeal, respondent has not provided us with a reason to disturb this finding.

To the extent that respondent argues that the two witnesses he sought to call to testify at the hearing could provide exculpatory evidence, we reject this contention. The law judge's prehearing order specifically required that both parties identify the witnesses they intended to call, and that the penalty for noncompliance with the order would be the exclusion of witnesses. At the hearing, respondent admitted that he did not comply with the order. In addition, the law judge carefully

analyzed and determined, after respondent's proffer, that the witnesses' testimony would be neither probative nor necessary.¹⁰

Respondent contends that Exhibits R-1 and R-2 constitute exculpatory evidence. Exhibit R-1 is a letter dated January 4, 2010, from Jim Howard, Jr.,¹¹ General Manager of HOA, which states that, after respondent performed the July 12, 2008 overhaul of N722HA, the aircraft experienced "electrical problems," and Mr. Howard "approved [it] to have further maintenance i.e. replacement of alternator." The letter further states, "[t]his [work] was completed after July 12, 2008 and

¹⁰ We have long held that law judges have significant discretion in overseeing testimony and evidence at hearings, and we typically review our law judges' evidentiary rulings under an abuse of discretion standard, after a party can show that such a ruling prejudiced him or her. See, e.g., Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Bennett, NTSB Order No. EA-5258 (2006)). We will not overturn a law judge's evidentiary ruling unless we determine that the ruling was an abuse of discretion. See, e.g., Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001). Cf. Administrator v. Ferguson, 352 Fed. Appx. 192, 2009 WL 3747426 (9th Cir. 2009) (holding that law judge erred in curtailing the cross-examination of FAA witness, because the witness was central to the Administrator's case and the ruling was therefore prejudicial); but see Administrator v. Lackey, No. 08-72357, 2010 WL 2781583 (9th Cir. July 8, 2010) (affirming evidentiary rulings of law judge, which the Board had affirmed, in four separate cases).

¹¹ At the hearing, the Administrator's attorney stated that it was "public knowledge" that Mr. Howard had recently been "criminally convicted for providing false statements to the FAA." Tr. at 127.

before August 1, 2008 by A&P mechanic Barry Watts." Exh. R-1. Exhibit R-2 is a letter from John L. Amber of JLA Aviation, stating that he had worked for HOA, that respondent completed an overhaul of N722HA in "early July of 2008," and that, "their [sic] was an issue that developed with the alternator a short time after Overhaul sign off and it needed to be replaced ... the work for the replacement was done by the in house A&P." Exh. R-2. We note that the law judge appeared to admit Exhibits R-1 and R-2 for the limited purpose of "showing [that they] exist," but not to establish the truth of the letters' content.

Even had the law judge fully admitted the exhibits into evidence, we do not believe they would have changed the outcome of the case. As explained above, neither Messrs. Howard nor Amber testified at the hearing, because respondent did not comply with the prehearing order and did not attempt to offer their testimony until after the conclusion of his case at the hearing. In addition, respondent did not attempt to offer the testimony of Barry Watts, who, according to Mr. Howard's letter, supposedly replaced the steel alternator with an aluminum one after July 12, 2008, but before August 1, 2008. Respondent also did not speculate as to how no logbook entries existed to indicate that anyone had replaced the pulley between July 12 and 31. Notwithstanding Exhibits R-1 and R-2, respondent simply failed to provide evidence to rebut the Administrator's case

that respondent erred when he verified that the aircraft was airworthy.

The Administrator's Appeal

The Administrator appeals the law judge's reduction in sanction. The Administrator argues that the law judge did not have the authority to reduce the sanction, because he did not make a finding that the Administrator's choice of sanction was arbitrary, capricious, or not in accordance with law, pursuant to 49 U.S.C. § 44709(d)(3).¹² The Administrator further contends that a 90-day suspension is well below the maximum that the Administrator could have sought for the violations at issue, and that the Scott case, which was the sole impetus for the law judge's reduction in sanction, is distinguishable. Respondent disputes the Administrator's arguments concerning sanction.

We agree that Administrator v. Scott is distinguishable. In Scott, the Administrator charged violations of §§ 43.9(a)(2), 43.11(a)(1), and 43.13(a) and (b). The Board affirmed the violations of all the regulations charged, except § 43.13(b).

¹² Title 49 U.S.C. § 44709(d)(3) states that:

The Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

NTSB Order No. EA-4030 at 8 (1993). In this case, the evidence establishes that respondent violated §§ 43.9(a), 43.11(a), 43.13(a), and 43.15(a)(1). Moreover, the Sanction Guidance Table provides as follows for such violations:

- 60 days suspension to revocation for failure to perform a proper inspection;
- 30 to 120 days suspension for improper approval of an aircraft for return to service;
- 30 to 60 days suspension for failure to make a maintenance record entry; and
- 15 to 30 days suspension for failure to describe adequately the work performed.

Exh. A-24 at B-3-e. While we have recently affirmed law judges' reductions in sanction in certain circumstances,¹³ we have consistently held that it is the Administrator's burden under the Act to clearly articulate the sanction sought, and to ask the Board to defer to that determination, supporting the request with evidence showing that the sanction has not been selected arbitrarily, capriciously, or in a manner contrary to law.¹⁴ In applying this standard, we have indicated that we will consider mitigating and aggravating factors in determining whether a

¹³ See, e.g., Administrator v. Hackshaw, NTSB Order No. EA-5501 (2010) (reconsideration denied, NTSB Order No. EA-5522 (2010)).

¹⁴ Administrator v. Peacon, NTSB Order No. EA-4607 at 10 (1997); see also Administrator v. Oliver, NTSB Order No. EA-4505 (1996) (Administrator introduced no evidence regarding applicable or relevant sanction guidance).

sanction should be at the high or low range of that which the Sanction Guidance Table provides.¹⁵

In this case, the law judge did not state that any mitigating factors existed to render the Administrator's sanction subject to reduction. In addition, a sanction of 45 days appears to be significantly below the aggregate of the range provided in the relevant sections of the Sanction Guidance Table. Therefore, we find that the law judge's reduction in sanction to 45 days, based upon the Scott case, was in error.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is granted;
3. The law judge's decision with regard to sanction is reversed; and
4. The 90-day suspension of respondent's A&P certificate shall begin 30 days after the service date indicated on this opinion and order.¹⁶

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

¹⁵ Hackshaw, supra note 13.

¹⁶ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

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

* * * * *

In the matter of: *

J. RANDOLPH BABBITT, *
ADMINISTRATOR, *
Federal Aviation Administration, *

Complainant, *

Docket No.: SE-18646
JUDGE POPE

v. *

PEDRO JOSE TURMERO, *

Respondent. *

* * * * *

U.S. Tax Court
51 First Avenue, S.W.
Courtroom 1524
Miami, Florida 33130

Tuesday,
March 31, 2010

The above-entitled matter came on for hearing
pursuant to Notice, at 9:30 a.m.

BEFORE: WILLIAM A. POPE, II,
Administrative Law Judge

APPEARANCES:

On Behalf of the Administrator:

GERALD ELLIS, Esq.
Federal Aviation Administration
Office of the Regional Counsel
Southern Region
P.O. Box 20636
Atlanta, Georgia 30320

On behalf of the Respondent:

PEDRO JOSE TURMERO, Pro Se
7330 NW 61st Terrace
Parkland, Florida 33067

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORAL INITIAL DECISION AND ORDER

This is a proceeding under the provisions of 49 U.S.C. Section 44709, formerly Section 609 of the Federal Aviation Act and the provisions of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board.

Pedro Jose Turmero, the Respondent, has appealed the Administrator's Order of Suspension dated July 1, 2009, which, pursuant to Section 821.31(a) of the Board's Rules serves as the complaint in which the Administrator ordered the suspension of any and all mechanic certificates held by him for 90 days because he allegedly violated FAR Sections 43.9, 43.11(a), 43.13(a), 43.15(a)(1) of the Federal Aviation Regulations.

In his answer to the complaint, Respondent admitted paragraphs 1 and 2 and denied paragraphs 3 through 14. Thus, he admitted that he holds mechanic certificate (number omitted), with airframe and power plant ratings and an inspection authorization.

He admitted that he performed maintenance on Robinson R-

1 22 helicopter N722HA on or about July 12, 2008 and that the
2 maintenance he performed included a 2200-hour field overhaul, a
3 100-hour inspection, and an annual inspection, and that he
4 installed a number of new parts.

5 He denied that he made a record entry stating, in part,
6 that the aircraft was airworthy and approved it for return to
7 service, and that he entered his mechanic certificate number, the
8 date July 12, 2008, and his signature.

9 He denied that the inspection required him to verify the
10 steel pulley was installed on the alternator but that a correct
11 steel pulley was not installed. He denied that certain listed ADs
12 were current and applicable to the aircraft, and that the
13 maintenance record does not indicate compliance with the ADs was
14 accomplished.

15 He denied that at the time of his inspection, he failed
16 to ascertain that N722HA met all applicable airworthiness
17 requirements. He denied listing two different total times for
18 N722HA at the time of the inspection.

19 SUMMARY OF EVIDENCE

20 Two Aviation Safety Inspectors, Carlton Kitchen, Jr.,
21 whose current post is as a PMI for Part 135 carriers and
22 flight schools, accompanied by ASI Edward Loop, who has 36
23 years of experience as a mechanic working on aircraft and has
24 been with the FAA for two years and is an assistant PMI,
25 testified that they went to the place of business of

1 Helicopters of America on July 30th, 2008, to review the
2 maintenance records of three Robinson R-22 helicopters owned
3 by Helicopters of America, including N722HA.

4 All of the aircraft were used for flight training
5 purposes. They said they were acting on a complaint by an
6 operations inspector about maintenance issues he had observed
7 during a visit to Helicopters of America. They returned the
8 next day, July 31st, 2008, and conducted ramp inspections of
9 the three helicopters, including N722HA.

10 They discovered that all three helicopters, including
11 N722HA, had aluminum alternator pulleys, not the steel pulleys
12 required by the Robinson maintenance manual checklist, step 7,
13 page 2.23. Exhibits A-2, A-7, and A-8, and A-8(a).

14 Inspector Loop used a magnet to determine that the
15 pulleys were not made of steel. Inspector Kitchen said that
16 they had obtained the most recent 100-hour inspection records
17 for the three helicopters. The inspection most recent was the
18 inspection on July 12, 2008 by the Respondent, who had
19 approved the return of the aircraft to service as airworthy.
20 He determined that two ADs, AD 2007-26-12 (Exhibit A-21) and
21 AD 88-26-01 R2 (Exhibit 22), had not been complied with
22 because they dealt with repetitive inspections, and there were
23 no maintenance records that complied with FAR 91.417(a)(2) and
24 43.9 by describing the work performed, what the result was,
25 and when the next inspection was due. That determination was

1 made by Inspector Kitchen, Exhibit A-5.

2 Exhibit A-12, which is a logbook entry, shows that
3 steel pulleys were not installed or a steel pulley, rather,
4 was not installed on N722HA until August 1, 2008. Exhibit A-
5 18 is a logbook entry for N222HA submitted in response to an
6 LOI sent to the Respondent on July 7th, 2008, and it shows
7 that the Respondent had performed a field overhaul, a 100-
8 hour, and annual inspection. The aircraft at that time had
9 4,305.8 hours.

10 The Respondent, who signed the airworthiness release,
11 had found the aircraft to be in airworthy condition and
12 approved for return to service on July 12th, 2008.

13 Exhibit A-9 is a logbook entry for a field overhaul,
14 100-hour inspection of N722HA with 4,364.2 hours, signed by
15 the Respondent and also dated July 12th, 2008. Inspector Loop
16 photographed the document on July 31st of 2008.

17 Exhibits 18 and 9 are slightly different in their
18 wording and reflect different total hours. There is nothing
19 in the record here to account for these discrepancies.

20 The FAA airworthiness directive compliance report,
21 Exhibit A-23, provided to Inspector Kitchen by Helicopters of
22 America for N722HA, dated July 12th, 2008, is signed by the
23 Respondent and does not list either AD 2007-26-12 or AD-88-26-
24 01 R2.

25 The Respondent elected not to testify in his own

1 defense. He offered an exhibit marked Exhibit R-4 and said,
2 but not under oath as a sworn witness, that it is a logbook
3 entry dated November 13, 2007, which he said showed compliance
4 with AD-88-26-01. It was admitted for the fact that it
5 exists, but not for the truth of what it says.

6 Respondent said, but not under oath as a sworn
7 witness, that marked Exhibit R-1 shows that he worked for
8 Biscayne Helicopters and had been hired by Helicopters of
9 America to do an overhaul and 100-hour inspection. It, too,
10 was admitted for the limited purpose of showing it exists, but
11 not for the truth of what it says.

12 Marked Exhibits R-5 and R-10 were admitted with
13 similar restrictions. Marked Exhibits R-6, 7, 8, 9, 11, and
14 12 were rejected as irrelevant. Marked Exhibits R-3 and R-13
15 were rejected as duplicates of Administrator exhibits.

16 AUTHORITY

17 FAR Section 43.11. Content form and disposition of
18 records for inspections conducted under Part 91 and 125, and
19 Sections 135.411(a)(1) and Section 135.419 of this chapter.

20 (a) Maintenance Record Entries. The person approving
21 or disapproving for return to service an aircraft, airframe,
22 aircraft engine, propeller, appliance, or component part after
23 any inspection performed in accordance with Parts 91, 123,
24 125, 135.411(a)(1), and 135.419 shall make an entry in the
25 maintenance record of that equipment containing the following

1 information:

2 (1) The type of inspection and a brief description of
3 the extent of the inspection.

4 (2) The date of the inspection and aircraft total
5 time in service.

6 (3) The signature, the certificate number, and the
7 kind of certificate held by the person approving or
8 disapproving the return to service, the aircraft, airframe,
9 aircraft engine, propeller, appliances, component part, or
10 portions thereof.

11 FAR Section 43.13. Performance Rules, General.

12 (a) Each person performing a maintenance, alteration,
13 or preventative maintenance on an aircraft, engine, propeller,
14 or appliance shall use the methods, techniques, and practices
15 prescribed in the current manufacturer's maintenance manual,
16 or instructions for continued airworthiness prepared by its
17 manufacturer, or other methods, techniques, or practices
18 acceptable to the Administrator, except as noted in Section
19 43.16.

20 You shall use the tools, equipment and test apparatus
21 necessary to assure completion of the work in accordance with
22 accepted industry practices. If special equipment or test
23 apparatus is recommended by the manufacturer involved, he must
24 use that equipment, or apparatus, or its equivalent acceptable
25 to the Administrator.

1 FAR Section 43.15. Additional Performance Rules or
2 Inspections.

3 (a) General. Each person performing an inspection
4 required by Part 91, 125, or 135 of this chapter shall:

5 (1) Perform the inspection so as to determine whether
6 the aircraft or portions thereof under inspection meet all
7 applicable airworthiness requirements; and,

8 (2) If the inspection is one provided for in Part
9 125, 135, or Section 91.409(e) of this chapter, perform the
10 inspection in accordance with the instructions or procedures
11 set forth in the inspection program for the aircraft being
12 inspected.

13 FAR Section 43.9. Content, Form and Disposition of
14 the Maintenance Records.

15 (a) Maintenance Record Entries. Except as provided
16 in (b) and (c) of this section, each person who maintains,
17 performs preventive maintenance, rebuilds, or alters an
18 aircraft, airframe, aircraft engine, propeller, appliance or
19 component part, shall make an entry in the maintenance record
20 for that equipment containing the following information:

21 (1) A description or reference to data acceptable to
22 the Administrator of work performed.

23 (2) The date of completion of the work performed.

24 (3) The name of the person performing the work, if
25 other than the person specified in paragraph (a)(4) of this

1 section.

2 (4) If the work performed on the aircraft, airframe,
3 aircraft engine, propeller, appliance, or component part has
4 been performed satisfactorily, the signature, certificate
5 number and kind of certificate held by the person performing
6 the work. The signature constitutes the approval for return
7 to service only for the work performed.

8 In the case of the Administrator v. Nyerges, NTSB
9 Order Number EA-5483 (2009), the Board affirmed a sanction of
10 suspension of 120 days for violations of FAR Sections 43.13(a)
11 and (b) and 43.9(d). The Board said that the Administrator
12 had provided photographs that indicate the aircraft in
13 question was not repaired in accordance with methods,
14 techniques, and practices prescribed in the aircraft's
15 maintenance manual and that respondent did not repair the
16 parts in the manner equal to their original, or probably
17 altered condition. The respondent did not deny that he failed
18 to submit a required Form 337 concerning the repairs.

19 In the case of Administrator v. Armstrong, NTSB Order
20 Number 5320, EA-5320 (2007), the Board affirmed revocation for
21 violations that included, among others, violations of FAR
22 Sections 43.13(a) and (b), and 43.9. The Board said that it
23 has previously held that mechanics, inspectors, and operators
24 must adhere to a high standard when performing maintenance on
25 aircraft and that it has also recognized that keeping accurate

1 maintenance records is a critical aspect of complying with the
2 FARs.

3 The Board went on to say that it has previously
4 expected firm compliance with FAR requirements regarding the
5 performance of maintenance in keeping adequate maintenance
6 records. The Board said that maintenance entries made by the
7 respondent in the aircraft maintenance log in that case did
8 not include such required information as the required
9 signature, certificate number, kind of certificate held by the
10 person approving the work, and the name of the person
11 performing the work.

12 The Board concluded that the Administrator had
13 established that respondent violated FAR Section 43.9. The
14 Board further found that a preponderance of reliable,
15 probative, and substantial evidence supports the findings
16 regarding the improper installation of the nose landing gear
17 doors. The evidence there supports the allegation that
18 respondent failed to use proper maintenance methods,
19 techniques and practices in the installation of landing gear
20 doors. As such, the Board affirmed the Law Judge finding of
21 the violation of FAR Section 43.13(a).

22 In that case, the Board further noted that it is
23 bound by written Agency guidance available to the public
24 regarding the sanction to be imposed unless the Board finds
25 that any such interpretation or case sanction guidance is

1 arbitrary, capricious, or otherwise not in accordance with the
2 law.

3 The Board said it is the Administrator's burden under
4 the Act to clearly articulate the sanctions sought and to ask
5 the Board to defer to that determination, supporting the
6 request with evidence showing that the sanction has not been
7 selected arbitrarily, capriciously, or contrary to law.

8 In Administrator v. Scuderi, NTSB Order Number EA-
9 5321 (2007) at pages 9 to 11, the Board affirmed this long-
10 held standard that airworthiness consists of two prongs: one,
11 whether the aircraft conforms to its type certificate and
12 applicable airworthiness directives; and, two, whether the
13 aircraft is in a condition for safe operation.

14 The Board said it does recognize that the term
15 airworthiness is not synonymous with fly ability. The Board
16 said in determining if an aircraft is airworthy, it considers
17 whether the operator knew or should have known of the
18 deviation in the aircraft's performance with its type
19 certificate.

20 In the Scuderi case, the Board concluded that while
21 the Administrator had not proven that the respondent's
22 aircraft did not conform to its type certificate, the
23 Administrator had nevertheless shown that the aircraft was not
24 in condition for safe operation when the respondent operated
25 the aircraft and that the respondent, in that case, knew of

1 the aircraft's condition of questionable airworthiness.

2 In Administrator v. Nielson, NTSB Order Number EA-
3 3755 (1992), the Board noted that an aircraft that is flyable
4 may, nonetheless, be considered unairworthy. The Board said
5 that it is not necessary that a respondent knew with absolute
6 certainty that a defect, a broken cable that controlled the
7 carburetor de-icing function in that case, rendered the
8 aircraft unairworthy. It was enough that he should have known
9 of the necessity for availability of carburetor heat to the
10 proper and safe operation of the aircraft he was piloting.
11 The Board said it is the ultimate authority of the pilot-in-
12 command to ascertain whether an aircraft is airworthy.

13 The Board cited Administrator v. Brodnax, 3 NTSB
14 2795, I think, 1980 case, in which it made clear that an
15 aircraft that is flyable may nonetheless be unairworthy.

16 Administrator v. Scott, NTSB Order Number EA-4030
17 (1993), the Board held that an entry certifying an aircraft as
18 airworthy after a 100-hour inspection violated FAR Section
19 43.11(a)(1), in that it did not adequately describe the extent
20 of the inspection when it said all ADs c/w, being complied
21 with, through this date.

22 The Board said such a notation is meaningless without
23 some reference to which ADs were applicable to the aircraft
24 and the method of compliance. The Board further said that the
25 failure to ensure that a particular AD had been complied with

1 was a clear violation of FAR Section 43.13(a), which requires
2 persons performing maintenance to use methods, techniques, and
3 practices acceptable to the Administrator.

4 The Board also held that an undated maintenance entry
5 that a particular AD had been complied with by an installation
6 of two oil lines violated FAR Section 43.9(a)(2). The Board
7 said the evidence established violations of FAR Sections
8 43.9(a)(2), 43.11(a)(1), and 43.13(a), and further said it
9 agreed that the most serious violation was noncompliance with
10 an AD and that was serious enough to warrant the 45-day
11 suspension.

12 In Administrator v. Baer, NTSB Order Number EA-4619
13 (1998), the Board considered a case in which the holder of an
14 IA conducted an annual inspection in which he identified
15 several deficiencies that required that parts be ordered and
16 installed in order to correct. Instead of entering a finding
17 that the aircraft is no longer airworthy in its certification,
18 he omitted the word annual from the certification that he
19 entered with his IA stamp, and signed and dated. The only
20 information missing was the description of the inspection
21 performed. The respondent contended that by not entering the
22 word annual, he had not returned the aircraft to service. He
23 said the owner could continue to operate the aircraft because
24 a prior inspection had not yet expired.

25 The Board held the reliance on a prior inspection by

1 an IA is unreasonable once a deficiency that renders an
2 aircraft un-airworthy is identified during an inspection.
3 Further, adding the word annual to his certification weeks
4 after the incomplete certification was entered into the
5 logbook without inspecting the aircraft to ensure the work had
6 actually been accomplished elsewhere, establishes that an IA
7 lacks the care, judgment, and responsibility to hold a
8 mechanic certificate with airframe and power plant ratings and
9 an inspection authorization. The Board affirmed violations of
10 FAR Sections 43.11(a)(4), 43.9(a), 43.15(a)(1) and 43.13(a)
11 and (b), and 39.3.

12 In Administrator v. Raab, NTSB Order Number EA-5300
13 (2007), the Board said it has previously held inspectors to a
14 high standard concerning violations of FAR Sections 43.13 and
15 43.15. It further said that it considers inspections to be a
16 form of maintenance, which are subject to the requirements of
17 FAR Sections 43.13 and 43.15. It also said the Administrator
18 may substantiate an inspector's improper certification of an
19 aircraft as airworthy by circumstantial evidence, given that
20 direct evidence is often impossible to ascertain.

21 The Board noted that it has previously held that it
22 is appropriate for inspectors to review and rely on
23 maintenance records to ensure safety of flight. The Board
24 further found that the failure of an Inspector to conduct a
25 thorough re-examination after he had found discrepancies in an

1 inspection violated FAR Sections 43.13 and 43.15.

2 FAR Section 43.13(a) clearly precludes certificate
3 holders from overlooking the provisions of maintenance
4 manuals. The respondent in that case did not adhere to the
5 manufacturer's instructions and failed to comply with FAR
6 Section 43.13(a) and (b) when he failed to ensure that an
7 elevator trim tab actuator was in airworthy condition prior to
8 certifying the aircraft for operation.

9 The Board said it has long held that the standard for
10 airworthiness consists of two prongs: one, whether the
11 aircraft performs to its type certificate and applicable
12 airworthiness directives; and, two, whether the aircraft is in
13 a condition for safe operation.

14 The Board held that the respondent violated FAR
15 Section 43.15(a)(1) because he did not adequately inspect the
16 elevator trim tab actuator and did not locate or review any
17 maintenance records regarding the elevator trim tab actuator,
18 or determine whether the aircraft met all reasonable
19 airworthiness requirements.

20 FINDINGS AND CONCLUSIONS

21 I find Inspectors Kitchen and Loop, who both
22 testified as sworn witnesses for the Administrator and
23 supported their testimony with exhibits verifying the accuracy
24 of what they said, and I further find that they are entirely
25 reliable witnesses who had no motive to testify falsely

1 against the Respondent.

2 The Respondent, on the other hand, chose not to
3 testify in his own behalf, called no witnesses, and submitted
4 no documentary exhibits for which he laid any kind of
5 reasonable foundation, or documents that were ultimate
6 admitted for the truth of what they say.

7 He proffered a number of documents while not under
8 oath, for which no foundation was laid, which for the most
9 part, were not admitted for the truth, but they are part of
10 the record and are available for review. Even if admitted for
11 the truth, these documents would not materially affect the
12 result I have reached in this case.

13 The Respondent also sought to call two witnesses
14 after he had rested, but I did not allow that because after
15 hearing a proffer of the expected testimony of the two
16 witnesses, I did not allow them to testify because it was
17 after the hearing and I concluded their testimony would not be
18 material. And in any event, the Respondent had not complied
19 with the discovery provisions of my prehearing order.

20 Under these circumstances and all the circumstances
21 of this case, I find that all of the allegations in the
22 complaint have been proven by a preponderance of the evidence.

23 Further, particularly relying on the case authority I
24 have mentioned, when applied to the facts in this case, I find
25 the Administrator has proven by a preponderance of the

1 evidence that the Respondent violated the Federal Aviation
2 Regulations as charged against him in the complaint.

3 The evidence clearly established that there is
4 nothing in the aircraft maintenance records prior to or on
5 July 12th, 2008, when N722HA was returned to service as
6 airworthy following the 100-hour and 2200-hour overhaul,
7 indicating that there was compliance with AD 2007-26-12 or AD
8 88-26-01 R2, or any indication when the next inspection was
9 due for those items.

10 I find that the absence of such an entry in the
11 aircraft maintenance records violates FAR Sections 43.9(a),
12 43.11(a), and 43.15(a)(1). I further find that the evidence
13 shows by a preponderance that the Respondent's return to
14 service of the aircraft on July 12, 2008, with the uncorrected
15 or the aluminum pulley installed on the alternator when a
16 steel pulley should have been installed, violated the same
17 FARs and FAR 43.13(a) as well.

18 That leaves the matter of the appropriate sanction.
19 The Administrator seeks a sanction of suspension of the
20 Respondent's mechanic certification and inspection
21 authorization for 90 days. The Administrator's sanction
22 guidance table provides a wide variety of sanctions that
23 appear to fit the violations committed by the Respondent,
24 ranging from 15 to 30-day suspensions, 60-day suspension, 60-
25 day suspension to a revocation, and 30 to 120-day suspensions.

1 I find that some of the violations of which the
2 Respondent has been found guilty of committing can be deemed
3 to carry several different sanctions. However, I also note
4 that the holders of IA are held to a higher standard of care.

5 In line with the Board's holding in Administrator v.
6 Scott supra, the AD violations here must be considered very
7 serious, perhaps even the most serious in this case, but
8 returning the aircraft to service with the wrong pulley
9 installed is not a minor matter.

10 In the Scott case, the Board affirmed a sanction for
11 violation of FAR Sections 43.9(a)(2), 43.11(a), and 43.13(a)
12 of suspension of the Respondent's IA privileges for 45 days,
13 and said that is not inconsistent with precedent.

14 I find the appropriate sanction in this case is
15 suspension of the Respondent's mechanic certificate with A&P
16 privileges, and suspension of his IA authorization for 45
17 days, which is not inconsistent with Board precedent, and
18 seems warranted by the Respondent's failure to meet the high
19 standards expected of the holder of an IA privilege.

20 Upon consideration of all the substantial, reliable,
21 and probative evidence of record, I find the Administrator has
22 proven by a preponderance of the evidence that the Respondent
23 violated FAR Sections 43.9(a), 43.11(a), 43.13(a), and
24 43.15(a)(1) as alleged in the complaint, but the reduction of
25 the sanction from a suspension of 90-days to 45-days is

1 warranted.

2

ORDER

3

ACCORDINGLY, IT IS ORDERED:

4

1. The Respondent's appeal is granted in part and
5 denied in part.

6

2. The Administrator's order with respect to the
7 FAR violations alleged in the complaint is affirmed.

8

3. The Administrator's order in respect to sanction
9 shall be modified to provide that any and all mechanic's
10 certificates held by the Respondent, including his mechanic's
11 certificate with airframe and power plant ratings, and his
12 inspection authorization shall be suspended for a period of
13 45-days.

14

15

16 EDITED ON

WILLIAM A. POPE, II

17 APRIL 20, 2010

Administrative Law Judge