SERVED: December 17, 2010

NTSB Order No. EA-5562

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 16th day of December, 2010

J. RANDOLPH BABBITT, Administrator, Federal Aviation Administration, Complainant, v. CHARLES EDGAR, Respondent.	Docket SE-18859

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on August 10, 2010.[1] The law judge's decision appeared to

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

affirm the Administrator's emergency order of revocation[2] of respondent's commercial and private pilot certificates, as well as respondent's second-class medical certificate, based on a finding that respondent violated 14 C.F.R. § 67.403(a)(1).[3] We remand for clarification concerning the law judge's order.

The Administrator issued the order, which serves as the complaint in this case, on April 16, 2010. The complaint alleged that respondent violated § 67.403(a)(1) by certifying that he had "no history of nontraffic conviction(s) (misdemeanors or felonies)," in response to question 18w on the medical certificate application. The complaint stated that this answer was false because respondent was convicted of criminal contempt on March 12, 1987, in Norfolk Probate and Family Court, and that the Supreme Judicial Court of Massachusetts affirmed the conviction on December 19, 1988. The complaint further alleged that, on February 1, 1995, respondent was convicted of

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[2] Respondent waived the expedited procedures normally applicable to emergency proceedings.

[3] The Administrator charged respondent with violating 14 C.F.R. § 67.403(a)(1), which provides that no person may make or cause to be made a fraudulent or intentionally false statement on any application for a medical certificate. The penalty for violating § 67.403(a)(1) includes suspension or revocation of all airman, ground instructor, and medical certificates and ratings held by a person, per § 67.403(b)(1). The law judge's decision, however, referenced § 67.403(c)(1), which limits the penalty for making an incorrect statement on a medical certificate application to suspension or revocation of one's medical certificate, only.

three counts of making false statements and one count of mail fraud in United States District Court in the District of Massachusetts, and that such conviction was affirmed on April 19, 1996, by the United States Court of Appeals for the First Circuit. The complaint listed six medical certificate applications, which dated from December 4, 1998, to April 30, 2009, in which respondent answered “no” in response to question 18w. The complaint stated that respondent’s answer to question 18w on these applications was incorrect and was fraudulent or intentionally false, and that the Administrator relied upon respondent’s answer to question 18w in issuing him a medical certificate.

Respondent appealed the Administrator’s complaint, and, as an attorney, proceeded pro se at the hearing, although a representative accompanied him. The Administrator submitted several exhibits at the hearing, including copies of the judgments against respondent, and provided the testimony of two aviation safety inspectors and a flight surgeon. Respondent rebutted the Administrator’s case by testifying that he made a mistake when he answered question 18w on the six medical certificate applications at issue.

The law judge issued an oral initial decision, in which he determined that respondent “made a … serious mistake,” and was therefore “guilty of violating § 6[7].403(c)(1).” Initial

Decision at 169. Although the law judge appears to incorporate paragraph 7 of the complaint by reference, later in the decision, the law judge stated that the Administrator did not prove paragraph 7 of the complaint, which provides as follows:

> On the applications referenced above in paragraph 6, in response to item 18w, "Medical History – HAVE YOU EVER IN YOUR LIFE … HAD ANY OF THE FOLLOWING? … Conviction and/or Administrative Action History, History of nontraffic conviction(s) (misdemeanors or felonies)," you answered "**no**."

The law judge stated that the Administrator did not prove that respondent's statements were intentionally false or fraudulent. Initial Decision at 172. However, the law judge ended the initial decision by affirming the Administrator's order. In particular, the law judge stated, "this Judge finds safety in air commerce or in air transportation and the public interest does require the affirmation of the Administrator's Emergency Order of Revocation dated April 16, 2010, in view of the Respondent's violation of Section 67.403(c)(1) of the Federal Aviation Regulations." Id.

In response to the law judge's decision, the Administrator appealed, apparently on the basis that the law judge did not affirm the Administrator's order. The Administrator's appeal argued that the law judge erred in concluding that respondent did not intentionally falsify his applications for airman medical certification, that the law judge articulated a "dubious

legal standard" for intentional falsification, and that the evidence does not support the law judge's determination.

Following the Administrator's submission of the appeal brief, the Administrator's attorney submitted a letter to the NTSB Office of General Counsel, in which he stated that the law judge also erred in citing § 67.403(c)(1), because § 67.403(c)(1) only provides for revocation of a medical certificate. The letter clarified that the Administrator had ordered revocation of all of respondent's certificates. Respondent replied to the Administrator's appeal brief, and urged the Board not to consider the Administrator's letter. We note that our rules do not provide for supplementation of briefs or pleadings after the deadline for the brief or pleading has passed. Given that we remand this case for clarification of the law judge's decision, however, we need not address this issue.

The law judge's decision appears ambiguous. At one point, the law judge stated that he was giving respondent the benefit of the doubt, but at the end of the decision, he appeared to affirm the Administrator's order. In addition, the law judge only referenced § 67.403(c)(1) in his disposition of the case, but the Administrator's order charged a violation of § 67.403(a)(1). The law judge also stated that the Administrator did not prove paragraphs 6(a) and 7 of the complaint. The complaint could be affirmed without paragraph

6(a), but we believe paragraph 7 is critical to the disposition of the case. Given the absence of any discussion concerning why he did not believe the Administrator proved paragraph 7, we are unsure of the law judge's basis for declining to affirm paragraph 7, and of his ultimate disposition of the case. We instruct the law judge to issue a clarified decision articulating whether he believed that the Administrator proved that respondent violated § 67.403(a)(1), and the basis for his finding.

ACCORDINGLY, IT IS ORDERED THAT:

This case is remanded to the law judge for further proceedings consistent with this opinion and order.

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

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of:                  *
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J. RANDOLPH BABBITT,               *
ADMINISTRATOR,                     *
Federal Aviation Administration,   *
                                   *
                  Complainant,     *  Docket No.:  SE-18859
     v.                            *  JUDGE FOWLER
                                   *
CHARLES EDGAR,                     *
                                   *
                  Respondent.      *
* * * * * * * * * * * * * * * * * *
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U.S. Tax Court
Courtroom 1013
Thomas P. O'Neil Federal Building
10 Causeway Street
Boston, Massachusetts

Tuesday,
August 10, 2010

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

BEFORE: WILLIAM E. FOWLER, JR.
Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE FOWLER: This has been a proceeding before the National Transportation Safety Board pursuant to the provisions of the Federal Aviation Act of 1958, as that Act was subsequently amended, on the appeal of Charles Edgar from an Emergency Order of Revocation dated April 16, 2010, which was issued by the Regional Counsel, New England Region of the Federal Aviation Administration. The Emergency Order of Revocation seeks to revoke Respondent Edgar's commercial pilot certificate number (omitted), Respondent's private pilot certificate number (omitted), and a second-class medical certificate issued to Respondent Edgar on April 30, 2009.

The Administrator's Emergency Order of Revocation, was duly promulgated pursuant to the National Transportation Safety Board's Rules of Practice -- as I mentioned earlier was issued consistent with the Rules of Practice of the NTSB by the Regional Counsel of the New England Region of the Federal Aviation Administration.

This matter has been heard before this United States Administrative Law Judge, and as is provided by the Board's Rules of Practice in emergency proceedings, specifically Section 821.56 of those Rules, it is mandatory that, as the Judge in this proceeding, issue an initial decision, which I'm going to do at this time.

Following notice to the parties, this matter came on for trial on August 10, 2010, in Boston, Massachusetts. The Respondent was present at all times and elected to proceed on a pro se basis. He was assisted by Roland Hughes, Esquire. The Administrator in this proceeding was very ably represented by Matthew Zappala, Esquire, of the Regional Counsel's Office, New England Region of the Federal Aviation Administration.

JUDGE FOWLER: Both parties have been afforded the opportunity to call, examine and cross-examine witnesses on behalf of their case, in addition to parties are afforded the opportunity to make final argument in support of their respective positions.

I have reviewed the testimony and the evidence in this

proceeding, which has consisted of three witnesses on behalf of the Administrator: Inspector Swanson, Flight Surgeon Paul Clark, and Aviation Safety Inspector Edward Kelleher. The Administrator has adduced upwards of 11 exhibits. Respondent had 2. The sole witness on behalf of the Respondent was the Respondent himself.

This is a very unusual case. We have here in Mr. Edgar, the Respondent, a highly trained and skilled individual, not only as a practicing attorney for at least four years and as a certified public accountant for many years. I don't think I've had a -- in fact, I know I haven't had a Respondent before me with these dual capabilities.

We have a case here that involves six items, conviction on three counts of making false statements by the Respondent Edgar and one count of mail fraud. As counsel for the Administrator has stated, it's almost inconceivable that he would not know what the proper and correct answer would be to question 18w on these six medical applications that he applied for. However, Administrator has a formidable uphill battle to prove intent of fraud or an intentional false statement. Respondent has admitted and stressed that he made a mistake, a mistake he made six times. It's almost inconceivable to me that this could occur where Respondent Edgar is concerned.

It is difficult for me to deny the logic that counsel for the Administrator has adduced here pertaining to -- the

circumstantial evidence which is so adequate and apropos, particularly where education of the Respondent is concerned, that it is difficult to prove he did not know that he was making a false statement. I am going to -- the education aspect of the proceeding here where the Respondent is concerned, I have heard other cases where Respondents were confused by the wording of 18w where the phraseology "drugs" or "alcohol" is used, and while I think that the Administrator's case is lacking somewhat in proving fraud or a deliberate intent to deceive or make a false statement, my determination ultimately is going to end in the same result that the Administrator seeks, the revocation of the certificates that the Respondent holds.

I'm doing this because it is entirely conceivable, based on stress and strains, and everything that airmen and people go through, there can be confusion. I'm giving the Respondent a bit of the benefit of the doubt in that respect, particularly with his exposure to his prior convictions, and exposure to mail fraud and making false statements affirmed by the Court of Appeals and the First Circuit April 19, 1996. However, the Respondent made a mistake, a serious mistake, an incorrect mistake in the answers that he made on six occasions to question 18w. Bearing that in mind, I will find him guilty of violating Section 64.403(c)(1) of the Federal Aviation Regulations, which still merits the sanction that the Administrator is seeking in this Emergency Order of

Revocation.

So to be as brief and concise as possible -- I will now make the following specific findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Looking at the 12 paragraphs, the 12 pertinent and salient paragraphs that comprise the Administrator's Emergency Order of Revocation of April 16, 2010: One, the Respondent admits paragraph 1, that he is currently the holder of commercial pilot certificate number (omitted), et cetera, et cetera. He has admitted paragraph 1.

Paragraphs 2, 3, 4, 5 and 6, I find the Administrator has proven those paragraphs, with the exception of paragraph denoted A of paragraph 6, which the Respondent admits as to April 30, 2009, when he applied for and was issued a second-class medical certificate. The other components of paragraph 6, the Administrator has substantially proven by a fair amount of substantial, reliable and probative evidence, and I am incorporating, by reference, paragraphs B, C, D, E and F of paragraph 6.

Paragraph 7, I'm incorporating that by reference, which refers to the question about had Respondent ever had a history of nontraffic convictions, and he answered no.

Paragraph 8, I incorporate that by reference that his

answer was not correct to information set forth and contained in paragraphs 2 through 5.

Paragraph 9, the Administrator has certainly proven that the Administrator relied on the answer that the Respondent supplied in his application of April 30, 2009, for a second-class airman medical certificate.

Paragraph 10, the information that Respondent provided in item 18w on the application referenced in paragraph 6 above was incorrect. It was not satisfactorily proven during the course of this proceeding that it was fraudulent or intentionally false.

Paragraph 11, I incorporate the paragraph, paragraph 11, by reference that the Administrator has successfully proven that the information provided in that item 18w on the applications was issued by the Respondent without thorough consideration of the actions I've described in the preceding paragraphs, 2, 3, 5 above.

Paragraph 12, I incorporate that by reference, my finding is based on the evidence adduced during the course of this proceeding that the Respondent certified that all entries were complete and true to the best of his knowledge, not knowing that he had provided information that was not only incorrect but that was false.

Paragraph 13, I find that Section 67.403(c)(1), which provides for the suspension or revocation of a medical certificate on which an incorrect statement was entered on the application for

a medical certificate on which the FAA relied, it is determined that Respondent's statements referred to above in paragraph 7 were not intentionally false or fraudulent as alleged in paragraph 10 above, but that were incorrect statements referenced above in paragraph 8, and are still the basis for revocation of Respondent's medical certificates.

Paragraph 14, this Judge finds safety in air commerce or in air transportation and the public interest does require the affirmation of the Administrator's Emergency Order of Revocation dated April 16, 2010, in view of the Respondent's violation of Section 67.403(c)(1) of the Federal Aviation Regulations.

ORDER

IT IS ORDERED that the Administrator's Emergency Order of Revocation of April 16, 2010 be, and the same hereby is, affirmed.

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EDITED ON
August 27, 2010

WILLIAM E. FOWLER, JR.
Chief Administrative Law Judge