

SERVED: August 12, 2013

NTSB Order No. EA-5673

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 9th day of August, 2013

_____	)	
MICHAEL P. HUERTA,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket SE-18963RM
	)	
JACKSON E. LANGFORD,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

Respondent appeals the amended decisional order on remand of Administrative Law Judge William R. Mullins, issued on August 27, 2012.<sup>1</sup> By that order, the law judge affirmed the Administrator’s 90-day suspension of respondent’s airline transport pilot (ATP) certificate, based on respondent’s alleged violation of 14 C.F.R. § 91.13(a) by deliberately creating a jetblast that

<sup>1</sup> A copy of the decision is attached.

endangered a Cessna 172 behind respondent's jet.<sup>2</sup> We affirm the law judge's decision.

*A. Facts*

This case arose from respondent's allegedly deliberate use of a high-thrust taxi maneuver that endangered a Cessna behind respondent's Learjet. In relevant part, testimony at the hearing before the law judge established the following facts.

On October 12, 2009, respondent was pilot-in-command of a Lear 45 aircraft, registered N145MW and operated by Basin Aviation, a 14 C.F.R. part 135 air carrier. Respondent, who at the time was Basin's chief pilot, operated the Learjet on a repositioning flight with no passengers aboard from Midland International Airport to Basin's home base at Midland Airpark, an uncontrolled airport<sup>3</sup> in Midland, Texas. Respondent and his first officer, Matthew Hogg, landed on runway 25 at Midland Airpark in instrument meteorological conditions<sup>4</sup> and vacated the runway by first turning left onto runway 16 and then turning eastbound onto taxiway Echo. When respondent vacated runway 16 via taxiway Echo, David Goll, a Midland College flight instructor, and Joseph Gillet, a student pilot, were in a Cessna 172 on taxiway Bravo, which is parallel to runway 16 and perpendicular to taxiway Echo. The Cessna was facing north on taxiway Bravo, holding short of runway 16 and awaiting departure. In that position, the Cessna blocked respondent's taxi route back to his parking position on the Basin Aviation ramp, which testimony established was near the midpoint of runway 16 along taxiway Bravo, south of the two aircraft's respective positions.

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<sup>2</sup> Section 91.13(a) prohibits careless or reckless aircraft operations so as to endanger the life or property of another.

<sup>3</sup> An uncontrolled airport is one without an airport traffic control tower to provide air traffic control services to aircraft on the ground and in the vicinity of the airport.

<sup>4</sup> According to respondent's testimony, the visibility was 10 statute miles with an overcast cloud ceiling at 800 feet. See Tr. 189, 216.

On the radio, respondent requested the Cessna switch places with him so he could turn right onto taxiway Bravo and taxi to his parking position. Mr. Goll informed respondent the Cessna was unable to trade places because the Cessna was holding short of the runway awaiting an instrument flight rules (IFR) release from air traffic control.<sup>5</sup> Mr. Goll testified, after he declined respondent's request to "trade places," he heard the Learjet's engines "spool up" to initiate taxi from the jet's position at the intersection of taxiway Echo and runway 16. He stated "[t]he engines came up just to start the taxi roll and came back again."<sup>6</sup> He watched the jet turn left onto taxiway Bravo, with its tail facing the Cessna's nose, and then observed "[respondent] spooled the engines up again," creating "hot air . . . coming towards us. . . . We knew that there was . . . jet blast coming towards us."<sup>7</sup> Mr. Goll stated the Cessna "shook, and the wings rocked very, very vigorously."<sup>8</sup> Mr. Gillet testified "the entire aircraft just started to shake violently."<sup>9</sup> First Mr. Gillet, and then both pilots, pushed the control yoke forward to hold the nose landing gear on the ground. Mr. Gillet testified he "grabbed the yoke, held onto the brakes, and

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<sup>5</sup> An IFR release is an authorization from air traffic control for an aircraft to depart under an IFR clearance. As occurred in this case, air traffic control may request a pilot hold on the ground for an IFR release, regardless of whether the point of departure is an uncontrolled airport. See generally Fed. Aviation Admin., Aeronautical Information Manual 2012 at § 5-2-6a.2 ("[Air traffic control] may issue 'hold for release' instructions in a clearance to delay an aircraft's departure for traffic management reasons (i.e., weather, traffic volume, etc.). When air traffic control states in the clearance, 'hold for release,' the pilot may not depart utilizing that IFR clearance until a release time or additional instructions are issued by [air traffic control]."); see also tr. 231-32.

<sup>6</sup> Tr. 46.

<sup>7</sup> Tr. 43-44.

<sup>8</sup> Tr. 44.

<sup>9</sup> Tr. 75.

proceeded to ride out a very violent experience in that aircraft” when the jetblast occurred.<sup>10</sup> He estimated the jet was 40 to 60 feet away from the Cessna at the time.<sup>11</sup> Both Messrs. Goll and Gillet identified a photograph of skid marks on the taxiway as the same marks they saw the jet’s landing gear produce during this maneuver.

Respondent re-entered runway 25 via taxiway Bravo, turning left again on runway 16 and ultimately vacating runway 16 via a taxiway closer to midfield. Mr. Goll recalled he visually inspected what he could see of the Cessna from the cockpit, and saw no damage. Messrs. Goll and Gillet took off after receiving their IFR release from ATC.

Respondent did not dispute Mr. Goll declined his request to trade places and, consequently, he had to taxi to the Basin ramp by turning in front of the Cessna. Respondent denied, however, using an excessive amount of thrust during any taxi maneuver.

At the hearing, both respondent and Mr. Hogg, the Learjet first officer, denied respondent applied excessive thrust when turning left on taxiway Bravo, although Mr. Hogg previously told a Federal Aviation Administration (FAA) inspector respondent had used excessive thrust. In his hearing testimony, Mr. Hogg stated he experienced nothing out of the ordinary as respondent taxied the Learjet to its parking position and could not explain how the skid marks on the taxiway were created. Respondent acknowledged under cross-examination there was no reason he had to exit runway 16 at taxiway Echo, adjacent to the Cessna, after initially vacating runway 25. He conceded, instead of placing his aircraft in a conflicting position adjacent to the Cessna,

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<sup>10</sup> Tr. 73-74. Mr. Goll testified further, “[a]s the Learjet made the corner and spooled up the engines, I immediately noticed that the left main tires of the Learjet locked up and started to make black marks on the pavement here as they rolled forward. And smoke started to come off those tires, the left two main tires.” The jet’s wheels “squiggled,” Mr. Goll testified, and with “the left tires [moving] a little bit left and then back straight again,” which was visible in skid marks left by the jet on the taxiway. Tr. 43-44.

<sup>11</sup> Tr. 77.

he could have taxied down runway 16 to taxiway Charlie, which would have avoided altogether the need for the two aircraft to “trade places” on taxiway Bravo.<sup>12</sup>

Following the incident, Mr. Gillet wrote a letter of complaint to the director of the Midland College flight program. The FAA received the letter from Midland College, and Aviation Safety Inspector Gordon Morris, with the Lubbock Flight Standards District Office (FSDO), commenced an investigation. Inspector Morris testified he investigated the complaint by, *inter alia*, interviewing numerous witnesses and summarizing his conversations with those witnesses in written notes.

These notes include a record of a telephone conversation with Mr. Hogg. In the record, Inspector Morris recounts Mr. Hogg told him respondent “deliberately and simultaneously applied the brakes and added power to both engines while [Mr. Hogg] expressed his objections and stated to [respondent] ‘I hope you didn’t blow them away.’” The latter phrase—“I hope you didn’t blow them away”—appears within quotation marks in the notes.<sup>13</sup> At the hearing before the law judge, however, Mr. Hogg denied making that statement. Another record recounts Inspector Morris’ telephone conversation with Lori Winter, Basin’s vice president for flight operations. According to the record, Ms. Winter told Inspector Morris, “I know what happened and already took care of it,” and that respondent’s maneuver was “stupid.” These passages appear within quotation marks in the record and are attributed to Ms. Winter.<sup>14</sup> Finally, Inspector Morris made a record of his telephone conversation with L.C. Durham, an official with Midland College. According to this record, Mr. Durham recounted a conversation he had with

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<sup>12</sup> Tr. 232.

<sup>13</sup> Exh. A-17.

<sup>14</sup> Exh. A-12.

Ms. Winter, in which she apparently told him respondent had engaged in the high-thrust maneuver as the Administrator alleged.<sup>15</sup>

Ultimately, Inspector Morris decided to pursue enforcement action against respondent after observing skid marks 75 feet in length left by the Learjet on the taxiway. The distance from the hold-short line to the start of the skid marks was 124 feet. Although respondent testified the skid marks could have resulted from the jet's landing gear turning irregularly during a maneuver at normal thrust, FAA Aviation Safety Inspector Dan Vengen, also with the Lubbock FSDO, found the Learjet's "left tires had flat spots on them" during routine surveillance of Basin's maintenance operation after the incident.<sup>16</sup>

On October 7, 2010, the Administrator issued an order suspending respondent's ATP certificate. The case proceeded to hearing before the law judge on May 3 and June 14, 2011.

## *B. Procedural History*

### *1. Oral Initial Decision*

At the conclusion of the hearing, the law judge found respondent violated 14 C.F.R. § 91.13(a) and affirmed the Administrator's order suspending respondent's ATP certificate for 90 days. However, the law judge did not make credibility findings with regard to any of the witnesses who testified at the hearing. In his June 2011 oral initial decision, the law judge ultimately concluded "[t]he testimony of the two pilots in the [Cessna] and the skid mark that's still out there today . . . just convinces me" the FAA's order of suspension was proper.<sup>17</sup> The law

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<sup>15</sup> Exh. A-15.

<sup>16</sup> Tr. 171-72. Inspector Morris testified a flat spot could indicate a tire had been subject to "hard braking", although Mr. Vengen testified that, despite the flat spots, there was "nothing unserviceable" with the aircraft. Tr. 141, 173.

<sup>17</sup> Initial Decision at 325.

judge also expressed his concerns regarding Inspector Morris' testimony and notes, which contained both quotes attributed to witnesses and Inspector Morris' own opinions and conclusions based on the witness interviews. The law judge believed this comingling of fact and opinion "cast a cloud over this [case]."<sup>18</sup> The law judge later stated, "[a]s we go to the comments by Mr. Morris, they were obviously his opinion versus a factual determination."<sup>19</sup>

In his legal conclusions, the law judge compared this case to Board cases involving collision hazards. He stated, "a collision hazard exists in the mind of the person who thinks that there's a collision hazard out there."<sup>20</sup> Using this legal theory as an analogy, the law judge relied upon the testimony of Messrs. Goll and Gillet regarding their perception of the hazard created by the jetblast. In addition, the law judge noted the skid marks on the taxiway were also evidence of respondent's violation of § 91.13(a).

With respect to sanction, the law judge affirmed the Administrator's 90-day suspension of respondent's ATP certificate, reasoning as follows:

And, unfortunately, for Mr. Langford, it's not the kind of case where I could even consider 0 or even 30 days if that happened, which I believe it did, and I think the evidence would support that finding, that it's – it was some deliberate act on the part of this Respondent. It wasn't just some inadvertent thing when he went around the corner and was taxiing back out to this runway. There was no reason for that to have happened except he was trying to create some anxiety for these [Cessna] pilots. And so, therefore, I believe that the order [of suspension] should be affirmed in its totality.<sup>21</sup>

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<sup>18</sup> Id. at 323-24.

<sup>19</sup> Id. at 324.

<sup>20</sup> Id. at 325.

<sup>21</sup> Id. at 326.

## 2. *First Appeal and Amended Order*

Respondent appealed the law judge's initial decision on June 20, 2011. On April 12, 2012, the Board issued an opinion and order remanding the law judge's initial decision with instructions for the law judge to make findings of fact, including specific credibility findings.<sup>22</sup> This direction was consistent with the Board's recent decision in Administrator v. Porco, in which the Board reaffirmed its long-standing rule requiring deference to a law judge's credibility findings so long as the findings are not arbitrary and capricious.<sup>23</sup> Remanding the law judge's oral decision in respondent's first appeal, we explained, on authority of Porco,

[W]e are reluctant to substitute our own credibility determinations for the law judge's or supplement the law judge's determinations in any manner. Our law judges need to make clear credibility findings tied to specific findings of fact based upon the testimony and evidence presented at the hearing. For this reason, we refuse to rely on implied credibility determinations which may only be gleaned from the law judge's final ruling in a given case.<sup>24</sup>

We therefore instructed the law judge to make detailed findings regarding the credibility of witnesses who testified at the hearing. We also concluded the law judge erred in applying the collision hazard standard for determining whether respondent violated 14 C.F.R. § 91.13(a), and we instructed the judge, on remand, not to apply that standard.<sup>25</sup> Accordingly, the law judge entered an order on August 27, 2012, reciting his findings with respect to the credibility of witnesses who testified at the hearing. Consistent with our instruction on remand, the law judge's order on remand did not apply the collision hazard standard.

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<sup>22</sup> Administrator v. Langford, NTSB Order No. EA-5625 (2012) (hereinafter "Langford I").

<sup>23</sup> Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), aff'd, 472 Fed.Appx. 2 (D.C. Cir. 2012).

<sup>24</sup> Langford I, supra note 22, at 5-6.

<sup>25</sup> Id. at 6.

Specifically, the law judge found Messrs. Goll and Gillet were credible witnesses because they testified consistently with one another and with the physical evidence and tire marks left by the Learjet.<sup>26</sup> The law judge further found the purported quotations contained in Inspector Morris's notes and attributed to people whom Inspector Morris interviewed regarding the incident were "credible" because they were consistent with physical evidence and the testimony of Messrs. Goll and Gillet.<sup>27</sup> On the other hand, the law judge found respondent's testimony was not credible. The law judge based this finding on inconsistencies between respondent's testimony and physical evidence, the testimony of Messrs. Goll and Gillet, and evidence of the statements made to Inspector Morris. The law judge stated respondent's "attempt to characterize the physical evidence of the tire marks as being the result of differential braking was not consistent, particularly as these skid marks were beyond the [point] where differential braking might be required, and also because these skid marks were in a straight line."<sup>28</sup> The law judge also found Mr. Hogg's testimony was not credible, citing inconsistency between his testimony that he was not aware of any "skidding" by the Learjet and the evidence, in Inspector Morris' notes, of his prior extemporaneous statements to Inspector Morris and Ms. Winters suggesting he was aware respondent had engaged in a high-thrust maneuver while taxiing around the Cessna. Having found respondent's and Mr. Hogg's testimony not credible, the law judge affirmed the Administrator's order of suspension for 90 days.

### *C. Respondent's Issues on Appeal*

Respondent now appeals the law judge's amended decisional order pursuant to remand.

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<sup>26</sup> Amended Decisional Order on Remand at 6.

<sup>27</sup> *Id.* at 7-9.

<sup>28</sup> *Id.* at 10.

Respondent contends the law judge's credibility findings are arbitrary, capricious, or clearly erroneous and are not consistent with the preponderance of evidence. Respondent further argues the law judge's affirmance of the Administrator's 90-day suspension is improper because, *inter alia*, the Administrator failed to introduce the FAA's Sanction Guidance Table into evidence at the hearing, and the law judge improperly disregarded mitigating factors that would have supported a lesser sanction.

## **2. Decision**

### *A. Law Judge's Credibility Findings*

The Board consistently has held that "resolution of a credibility determination . . . is within the exclusive province of the law judge."<sup>29</sup> As we reaffirmed in Porco, we ultimately defer to a law judge's findings regarding the credibility of witnesses so long as the findings are not arbitrary and capricious.<sup>30</sup> Absent a showing that a law judge's credibility findings are arbitrary and capricious, we accord those findings a "high level of deference."<sup>31</sup> Likewise, we review *de novo* a law judge's findings of fact and conclusions of law.<sup>32</sup>

In this case, respondent essentially calls upon the Board to reject the law judge's credibility determinations because they are inconsistent with evidence more favorable to respondent.<sup>33</sup> In the order on remand, the law judge made specific findings, as we directed in our

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<sup>29</sup> Porco, NTSB Order No. EA-5591 at 13.

<sup>30</sup> Porco, NTSB Order No. EA-5591 at 20-21.

<sup>31</sup> Id. at 21.

<sup>32</sup> See Administrator v. Dustman, NTSB Order No. EA-5657 at 6 (2013) ("While we give deference to our law judge's rulings on certain issues, such as credibility determinations or evidentiary rulings, we review the case, as a whole, under *de novo* review.").

<sup>33</sup> To the extent respondent argues the law judge's credibility findings were "arbitrary, capricious, and/or clearly erroneous," respondent's statement of our standard of review is inconsistent with

order in respondent's first appeal,<sup>34</sup> regarding the credibility of witnesses who testified at the hearing. We accord a "high level of deference" to the law judge's credibility determinations because the law judge—not the Board—is best-positioned to observe the witnesses and make necessary assessments of their candor.<sup>35</sup>

To be sure, this case presented several factual disputes with respect to, among other issues, the relative positions of the two aircraft, the timing, magnitude, and location of respondent's alleged application of thrust, and the effects of that maneuver on the Cessna behind the jet. The law judge relied upon substantial evidence adduced at the hearing, including the testimony of Messrs. Goll and Gillet, to find respondent committed the acts charged by the Administrator. Mr. Goll testified, after he declined respondent's request to "trade places," he watched as respondent maneuvered the Learjet onto taxiway Bravo, in front of the Cessna, and then heard and felt a violent jetblast. As stated above, Mr. Goll testified the Cessna "shook, and the wings rocked very, very vigorously" during the jetblast.<sup>36</sup> Mr. Gillet described the incident as "violent."<sup>37</sup> Mr. Goll testified he saw the left main tires of the Learjet "[lock] up and [start] to make black marks on the pavement."<sup>38</sup> He and Mr. Gillet described the skid marks and identified them in a photograph as the same marks they saw the Learjet produce during the

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(.continued)

our decision in Porco. In Porco, we expressly adopted "arbitrary and capricious" as our sole standard of review for our law judge's credibility determinations and rejected all other legal standards. NTSB Order No. EA-5591 at 20 (2011).

<sup>34</sup> Langford I, supra note 22.

<sup>35</sup> Porco, supra note 23, at 20-21.

<sup>36</sup> Tr. 44.

<sup>37</sup> Tr. 73, 75.

<sup>38</sup> Tr. 44.

jetblast encounter. The law judge found Messrs. Goll's and Gillet's testimony was credible because they testified consistently with one another and with the "physical evidence": photographs of skid marks left by the Learjet on the taxiway.<sup>39</sup>

We acknowledge respondent presented evidence at the hearing contradicting the testimony and evidence recounted above. Both respondent and Mr. Hogg testified respondent never increased thrust beyond a normal range for taxi. Respondent offered an alternative theory as to why the Learjet's tires may have created skid marks on the taxiway directly in front of the Cessna's position. However, respondent has not demonstrated the law judge committed reversible error in finding the testimony of Messrs. Goll and Gillet credible despite the existence of contrary evidence. Examining the law judge's credibility findings in the context of all the evidence, we find nothing arbitrary and capricious in the law judge's determination that Messrs. Goll and Gillet were credible witnesses. The law judge provided a rationale for his credibility assessments and assessed the witnesses' credibility in the context of competing evidence. We find no reversible error in the law judge's credibility determinations with respect to the witnesses who testified before the judge.

Respondent argues further the law judge improperly determined the statements of Mr. Hogg, Ms. Winters, and Mr. Durham recounted in Inspector Morris' notes were "credible." Our conclusion here is not essential to a resolution of this case, because we find the law judge's credibility findings, the testimony of Messrs. Goll and Gillet, and photographs of the skid marks are sufficient evidence to affirm the law judge's order. However, we cannot conclude a law judge could, in most cases, properly determine an out-of-court statement is, in and of itself, "credible" if the declarant does not testify before the judge. In Administrator v. Gibbs, we

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<sup>39</sup> Amended Decisional Order on Remand at 8.

recently held the law judge committed reversible error in making credibility determinations based solely on exhibits submitted in support of a motion for summary judgment.<sup>40</sup> We concluded in Gibbs, “if resolution of an issue requires a law judge to make credibility findings, the law judge must do so by taking testimony and developing the record *at a hearing*.”<sup>41</sup>

Although this case is procedurally distinguishable from Gibbs—insofar as the law judge in this case did not resolve a credibility issue at the summary judgment phase of the proceeding—we apply the teaching of Gibbs with equal force here, particularly with respect to the testimonial hearsay contained in documents the law judge deemed “credible.” Rather than formalistically determining these statements’ credibility, the law judge should have weighed and considered the out-of-court statements in the same manner as the law judge considered the other documentary evidence. Nonetheless, we do not believe consideration of these statements was critical to the outcome of this case, given the substantial evidence recited above indicating respondent created a jetblast, nor do we believe the judge erred in determining respondent’s and Mr. Hogg’s testimony was not credible.

On a related note, we agree with respondent and the law judge that, had the judge applied recent legislation requiring enforcement hearings be conducted under the Federal Rules of Evidence,<sup>42</sup> the out-of-court statements at issue likely would have been inadmissible hearsay.<sup>43</sup> Respondent argues, without any legal authority, the Board should retroactively apply the legislation to the hearing in this case, which occurred more than a year before the legislation was

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<sup>40</sup> NTSB Order No. EA-5638 at 6 (2012).

<sup>41</sup> Id. (emphasis in original).

<sup>42</sup> Pilot’s Bill of Rights, Pub. L. No. 112-153, § 2(a), 126 Stat. 1159 (2012).

<sup>43</sup> See Fed. R. Evid. 801-02.

enacted. Particularly in view of a strong presumption at common law against retroactive application of legislation,<sup>44</sup> we do not discern a viable legal basis for retroactive application of the legislation.

Ultimately, the law judge determined the testimony of Messrs. Goll and Gillet was credible for purposes of finding the Administrator met his burden of proving a violation of 14 C.F.R. § 91.13(a). Furthermore, the law judge's finding that respondent violated 14 C.F.R. § 91.13(a) is supported by a preponderance of evidence, and we affirm the law judge's credibility determinations and factual findings.

#### B. *Sanction*

Finally, with regard to sanction, respondent argues the law judge erred in deferring to the Administrator's recommended sanction of a 90-day suspension because the Administrator failed to introduce the FAA Sanction Guidance Table<sup>45</sup> into evidence during the Administrator's case in chief. Respondent urges us to examine the length of the suspension in this case in the context of sanctions in past cases. We decline to do so. However, we will consider the presence of aggravating and mitigating factors as set forth in prior cases.<sup>46</sup>

In this case, evidence and credible testimony establish, after Mr. Goll declined respondent's request to "trade places," respondent applied an excessive amount of thrust and created a jetblast aimed directly at the Cessna. In addition, the parties do not deny the

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<sup>44</sup> See, e.g., Singh v. George Washington Univ. Sch. of Med. & Health Sciences, 667 F.3d 1, 4 (D.C. Cir. 2011) (citing Landgraf v. USI Film Prods., 511 U.S. 244, 264, 272 (1994)), cert. denied, 133 S. Ct. 172 (U.S. 2012); see also Landgraf, 511 U.S. at 275 n.29 (explaining "the mere fact that a new rule is procedural does not mean that it applies to every pending case").

<sup>45</sup> Fed. Aviation Admin. Order 2150.3B, App. B (2007).

<sup>46</sup> See, e.g., Administrator v. Hackshaw, NTSB Order No. EA-5501 (2010) (recon. denied, NTSB Order No. EA-5522 (2010)) and Administrator v. Simmons, NTSB Order No. EA-5535 (2010).

relationship between Basin Aviation and Midland College’s flight-training program was contentious during the time of the conduct at issue here. In particular, Inspector Morris testified Basin Aviation did not view with favor the flight school’s policy of “adher[ing] to the hold short lines . . . as a part of [its] primary basic training and to instill good safety habits.”<sup>47</sup> The application of thrust was so substantial that respondent apparently applied braking in a manner causing the left main landing gear to skid along the taxiway and generate smoke visible to Messrs. Goll and Gillet. The testimony and evidence support the inference that respondent created the jetblast intentionally, in retaliation for Mr. Goll’s refusal to move the Cessna across the hold-short line and allow the Learjet to pass. We note as well, when respondent applied a high thrust setting, the Learjet was pointed directly toward a runway—the same runway on which the aircraft had just landed—at an uncontrolled airport in instrument meteorological conditions.

We are compelled to emphasize respondent’s proximity to a runway he knew was in use for takeoffs and landings when he applied the high thrust setting. The runway environment—including the areas near taxiways’ intersections with runways—is a safety-critical area where a pilot must be particularly prudent, cautious, and focused solely on safely maneuvering the aircraft and watching out for conflicting traffic. Respondent apparently recognized the safety considerations at issue in runway safety areas when he stated in testimony, “obviously, you don’t want to loiter around on runways that people are taking off and landing on if you don’t have to.”<sup>48</sup> We find it highly unlikely respondent could have adequately focused on taxiing the aircraft back onto the landing runway while ensuring no traffic was on or approaching the

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<sup>47</sup> Tr. 138.

<sup>48</sup> Tr. 192 (respondent’s testimony explaining why he felt “it was important” to expedite his taxi onto taxiway Bravo in front of the Cessna).

runway at the same time he was engaging in the behavior found by the law judge. As we have suggested in the past, “a disregard for safety” must be “taken seriously” in the sanction analysis.<sup>49</sup> We find in this case an application of excessive thrust, for purposes of harassing pilots in another aircraft, in close proximity to a runway utilized for takeoffs and landings, when the aircraft is moving toward that runway, evinces such a disregard for safety.

Respondent, however, argues for mitigation of the 90-day suspension on the basis of his claim on appeal that witnesses “exaggerated” and “made up” some of the evidence against him.<sup>50</sup> As explained above, respondent has not demonstrated the factual findings undergirding the law judge’s selection of sanction should be overturned, as they are supported by substantial evidence in the record. Moreover, to the extent respondent argues the term of the suspension should be reduced because it will cause a loss of livelihood for a period of time, we repeatedly have held the fact that an airman “will suffer economic hardship if we suspend his certificate is not a factor that we consider in our analysis.”<sup>51</sup> We find no other basis for modifying the sanction imposed in this case.

We conclude the 90-day suspension imposed by the law judge was reasonable. The law judge found respondent’s action was “deliberate” and was calculated to cause “anxiety” for Messrs. Goll and Gillet. We therefore affirm the sanction imposed by the law judge.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent’s appeal is denied;

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<sup>49</sup> Simmons, *supra* note 51, at 11.

<sup>50</sup> Appeal Br. at 31.

<sup>51</sup> Administrator v. Jablon, NTSB Order No. EA-5460 at 16 (2009).

2. The law judge's amended decisional order on remand is affirmed; and
3. The Administrator's 90-day suspension of respondent's airline transport pilot certificate is affirmed.

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

Served: August 27, 2012

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

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MICHAEL P. HUERTA,  
ACTING ADMINISTRATOR,  
FEDERAL AVIATION ADMINISTRATION,  
  
Complainant,  
  
v.  
  
JACKSON E. LANGFORD,  
  
Respondent.  
  
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Docket SE-18963RM

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**AMENDED DECISIONAL ORDER ON REMAND**

By Order of the National Transportation Safety Board (Board), NTSB Order No. EA-5625, dated April 12, 2012, this matter is again before the undersigned for clarification of the original Oral Initial Decision issued on June 14, 2011. In that Order, the Order of Suspension suspending Mr. Jackson E. Langford's (Respondent) Airman Certificate for a period of 90 days was affirmed. This two-day hearing began on May 3, 2011 and concluded on June 14, 2011. Both hearing days were held in Midland, Texas.

The Order of Suspension, which served as the compliant, herein provided as follows:

1. At all times pertinent herein, you held Airline Transport Pilot Certificate No. 002781333.
2. On October 12, 2009, at approximately 14:15 hours, local time, you operated a Lear, Model 45, civil aircraft N145MW, at the Midland Airpark Airport (MDD), Midland, Texas.
3. On the date and time noted above, after you landed on RWY 25, you turned left on RWY 16, and turned left on taxiway Echo.
4. At the time you turned left onto taxiway E, a Cessna 172, civil aircraft N66045, the property of another, with a student pilot and an instructor on board, was parked on taxiway Bravo, holding short for RWY 16 while waiting for Midland TRACON's instructions.
5. At that time, you radioed the pilots of N66045 and asked them to "trade places." They declined to do so because air traffic had not yet issued them a clearance to enter instrument meteorological conditions. Furthermore, at that time, there were other aircraft inbound for RWY 25.
6. After N66045 declined to "trade places," you turned ahead of the Cessna, located approximately 40 to 50 feet away, and you increased throttle to an excessive power setting while simultaneously applying your brakes.
7. Your actions as described above caused your aircraft to leave skid marks of approximately 75 feet in length on taxiway Bravo.
8. Your actions created a jet wash that caused the Cessna 172 to shutter violently and caused first one wing, then the other wing, to lift and then drop hard.
9. Your actions, as described above, were reckless in that they endangered the lives of the student pilot and the instructor as well as the Cessna aircraft itself.

As a result of those allegations, the Federal Aviation Administration (Administrator) sought a suspension of 90 days for violation of Federal Aviation Regulation Section 91.13(a).

That regulation provides as follows:

Sec. 91.13 Careless or reckless operation.

- a. Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

Respondent's Answer admitted paragraphs 1, 2, and 3, and the evidence was uncontroverted and established paragraphs 4 and 5.

#### Facts

On October 12, 2009, David Goll, a Midland College flight instructor, and Joseph Gillet, an instrument student pilot from Midland College, were operating a Cessna 172 at Midland Airpark in Midland, Texas. At the time of this incident, Mr. Goll and Mr. Gillet were holding short on taxiway Bravo in the Cessna, awaiting their instrument clearance from Air Traffic Control (ATC).

While the Cessna was holding short, Respondent, the Chief Pilot for Basin Aviation, and his co-pilot Mathew Hogg, landed in a Lear 45 aircraft and taxied onto taxiway Echo. Upon arriving at the intersection of the taxiways Echo and Bravo, Respondent radioed the Cessna to his right, asking to trade places. The Cessna with Mr. Goll and Mr. Gillet responded that they were holding short, awaiting a clearance. Respondent then turned left onto taxiway Bravo in front of the Cessna and spooled up his engines. Messers Goll and Gillet felt the blast from the Lear jet, saw the nose dip, and saw smoke coming from the Lear jet's left tires. The evidence established that the skid marks made from the left tires were 75 feet long and began 124 feet from the hold short line.

The Board on remand has directed the undersigned to make specific credibility finding tied to finding of fact. Based on these findings provided hereafter, the Administration Order of Suspension, as issued, will again be affirmed.

## Administrator's Witnesses

The Administrator called four witnesses who testified in person during this hearing.

The first two witnesses were the instructor pilot and instrument student pilot aboard the Cessna aircraft.

Mr. David Goll, the instructor pilot, testified that he and Mr. Gillett were holding short at the hold short line on taxiway Bravo. He saw the Lear jet land and approach their position on taxiway Echo, and the Lear jet asked them (the Cessna) if they wanted to trade places. Mr. Goll advised that they had been instructed by Air Traffic Control (ATC) to hold short awaiting their clearance. Mr. Goll testified that they could hear the Lear Jet's engine spool up, and it began to roll forward and turn left down taxiway Bravo in front of them. After it began its roll and turn, Mr. Goll stated that the Lear continued to spool up its engine, even more so after the turn was complete. After it had turned, Mr. Goll saw the nose of the Lear dip, and he then saw smoke coming from the left main tires of the Lear. As a result of the jet blast the Cessna was experiencing, Mr. Goll stated that Mr. Gillet grabbed the yoke and held it forward to keep the nose of the Cessna on the ground. Mr. Goll said the Cessna shook and the wings rocked vigorously. He said that they were in shock and didn't know why this was happening. He said that both he and Mr. Gillet ended up holding the yoke forward. He testified that it was not raining and taxiways were not wet. As the Lear continued away, Mr. Goll asked them by radio if they were okay because he believed they had some sort of malfunction with the throttles or their brakes.

Mr. Goll was a credible witness and his testimony was consistent with his co-pilot, Mr. Gillet, and consistent with the physical evidence, the tire marks left by the Lear jet.

The second witness called by the Administrator was Mr. Gillet, the instrument student pilot in the Cessna. He testified that the Lear asked them to trade places to which the flight instructor, Mr. Goll, advised they were instructed to hold short awaiting a clearance. Mr. Gillet advised that he heard the engines of the Lear spool up, and it rolled around the corner and down taxiway Bravo in front of the Cessna. Mr. Gillet testified that, as the Lear turned in front of them, he heard the Lear's engines really spool up. He said he advised Mr. Goll that they were about to really get blasted, and he grabbed the yoke and pushed forward while applying the brakes, and that they experienced a very violent experience as a result of the blast from the Lear's engines. He also testified that after turning the corner, he saw the Lear's nose dip and saw smoke coming from its main gear. Mr. Gillet testified that it was not raining and the taxiways were not wet. Mr. Gillet testified that as a result of their experience, he wrote a letter of complaint and gave it to Mr. L. C. Durham, the director of the flight program at Midland College. Mr. Gillet testified that the Lear jet engines were 40 to 60 feet from the Cessna as it made the turn, and that the Cessna was holding 10 to 20 feet short of the hold-short line.

There was great effort on the part of Respondent's counsel to attempt to impeach Mr. Gillet, including raising some issues he had had before becoming a student at Midland College. However, his testimony concerning what happened that day to him and Mr. Goll was credible, consistent with Mr. Goll's testimony and consistent with the physical evidence, the skid marks left by the Lear.

The third witness called by the Administrator was Mr. Gordon Morris, and his testimony will be discussed last.

The fourth witness called was Mr. Don Vengen, an Aviation Safety Inspector with the Lubbock Flight Standards District Office (FSDO). Mr. Vengen testified that he took photographs of the maintenance records for the Lear jet in question on November 29, 2010, which covered the period prior to and after the date of the incident, October 12, 2009. These records were marked and admitted as Exhibit A-21. With that admission, counsel for the Respondent stipulated that there were no irregularities or mechanical malfunction with this airplane.

On cross examination, Mr. Vengen was asked if there was anything in the maintenance log about tires needing to be replaced because of flat spots. He advised that the record reflected that on June 15, 2010, tires were replaced. On redirect, Mr. Vengen testified that before the tires were changed, and after October 12, 2009, he inspected the aircraft and the left tires had flat spots on them. Mr. Vengen testified that Mr. Randy Ester, Director of Maintenance for the Lear operation, said they were bumpy but not beyond limits. Mr. Vengen's credibility was not an issue in these proceedings.

Mr. Gordon Morris was the third witness called by the Administrator, and the last to be discussed here. Mr. Morris is an Aviation Safety Inspector with the Lubbock FSDO and testified that he had been the Principal Operations Inspector (POI) for both Basin Aviation, the Lear jet operator, and the Midland College flight school. He testified that his supervisor had received a complaint letter about the incident in question from the Midland flight school (Mr. Gillet's letter), and that he was assigned to investigate. Most of the exhibits were stipulated to and established that Basin Aviation was the operator of the Lear jet in question, and that Respondent, Jackson Langford, was the Chief Pilot for that organization.

The key exhibits introduced and admitted during Mr. Morris' testimony were the records of phone conversations he had made during his investigation. As stated in the original Decision, these were troubling for the undersigned and, at the Board's direction in the Remand Order, I will attempt to clarify.

First, hearsay was admissible under the Board's rules and the Administrative Procedure Act at the time of this hearing. On admission, that hearsay is entitled to just that weight given to it by the trier of fact (the Judge). Now, given the recent passage of the "Pilot's Bill of Rights", which makes applicable the Federal Rules of Evidence to Board hearings, only hearsay governed by an exception under the Federal Rules will be admissible. Over the years, a key part of the Administrator's evidence in many Board cases has been the ASI's record of phone calls made while investigating a possible violation of the regulation. Except where that record is made of a Respondent, these recordings will probably not be admitted under Federal Rules.

The first of these phone calls recorded by Mr. Morris was Exhibit A-12. The person he was talking to was Ms. Lori Winter, Vice President of Flight Operations for Basin Aviation. Mr. Morris spoke to her while on his way to Midland to investigate the complaint. Ms. Winter advised that Mr. Morris didn't need to come down because she had taken care of it. She then advised that Matt Hogg was First Officer and was yelling at Jackson not to do it. She said it was stupid, that she had taken care of it, and that it wouldn't happen again. Here, Mr. Morris put all comments by Ms. Winter in direct quotes. Her comments were consistent with the testimony of the Cessna pilots and consistent with the physical evidence of the skid marks, and were un rebutted by Respondent's evidence, and therefore, credible for consideration by the undersigned.

The second record of phone conversation was on October 27, 2009, with Mr. L. C. Durham, Midland College Aviation Director (Exhibit A-15). Comments attributed to Mr. Durham were that, in a conversation with Ms. Winter, she related to Mr. Durham that Mr. Langford's actions were deliberate and unprofessional when he applied excessive thrust to the engines and nearly caused damage to the Cessna parked behind them. These comments were not in direct quotes, but were comments made to Mr. Durham, not Inspector Morris. Hearsay on hearsay was admissible at the time of the hearing. These comments, also attributable to Ms. Winter, were consistent with the testimony of the Cessna pilots, consistent with the physical evidence of the skid marks and, therefore, credible.

The third record of phone call offered was with Mr. Mathew Hogg, the First Officer of the Lear jet on the date in question (Exhibit A-17). The date of the phone call was October 27, 2009. Mr. Hogg advised Inspector Morris that Respondent turned ahead of the Cessna with their tail facing the Cessna, then deliberately and simultaneously applied the brakes and power to both engines while the First Officer expressed his objection and stated to the captain, "I hope you didn't blow them away." Mr. Hogg also stated that the Cessna stated over the radio, "You need to check your left main tires." Then, in the section of this log captioned "Conclusion, Action Taken or Required," the inspector wrote that Mr. Langford applied sufficient power to leave approximately 75 feet of skid marks from both left main tires. Clearly, this last comment would be attributable to the inspector, and not Mr. Hogg. However, the one direct quote of Mr. Hogg about, "I hope you didn't blow them away", is consistent with the testimony of the Cessna pilots and consistent with the physical evidence of the skid marks and, therefore, is credible.

The comments by the undersigned on the record about the troubling nature of these recorded phone calls was made primarily to encourage Inspector Morris to be more consistent

with the preparation of those documents and to use, or not use, direct quotes in all these documents he prepared.

#### Respondent's Witnesses

The Respondent called three witnesses, the Respondent, Mr. Langford, Randy Estes, and Mathew Hogg.

Respondent, Jackson Langford, was called and stated that he was the PIC of the Lear jet in question, and that he and Mr. Hogg had brought the aircraft over from Midland International Airport on the date of the incident to Midland Airpark. He stated that the aircraft was empty and light. He testified that the Cessna was holding short on taxiway Bravo and he, Respondent, asked if they wanted to trade places. When the Cessna declined, Respondent continued his taxiing of the Lear around the corner and proceeded to taxi away from the Cessna. He testified that he did not use excessive thrust or use his brakes, except for differential braking to complete the turn. He further testified that he did not hear the Cessna ask if they had a problem after the turn, nor did he hear any comments by his First Officer, Mr. Hogg. He testified that the pavement was wet and identified the METARs showing the weather that day. On cross-examination, he did state that the last rain shown on the METAR was the day before, and the last drizzle was 22 hours before. Respondent did not testify to any conversations with Ms. Lori Winter, his Vice President of Flight Operations, until the FAA Inspector, Mr. Morris, came to Midland Aviation. He was not asked any questions about meeting with her prior to Mr. Morris' visit, either on direct or cross-examination. Respondent did testify about the blast testing done with the Lear jet and a different Cessna 172, and that will be addressed later in this opinion.

Respondent testimony was not credible. His testimony that he didn't hear the comment over the radio from the Cessna about "are you okay" was not consistent with the testimony of his co-pilot or the pilots in the Cessna. His attempt to characterize the physical evidence of the tire marks as being the result of differential braking was not consistent, particularly as these skid marks were beyond the intersection of the taxiways where differential braking might be required, and also because these skid marks were in a straight line. His comments that he was first aware of this investigation when he was advised that the FAA Inspector was coming were inconsistent with Ms. Winter's and Mr. Durham's statements made to the Inspector prior to the Inspector's arrival.

The next witness for Respondent was Mr. Randy Estes, who testified that he was the Director of Maintenance for Basin Aviation and that he held an Airframe and Power Plant rating and an Inspection Authorization, all issued by the FAA. Mr. Estes testified about the demonstration that he and Respondent did with the Lear jet and a Cessna 172. He said the Cessna was buffeted and the wings rocked up and down, but that he never felt he was in danger. Mr. Estes also spoke to the tire marks left by the Lear, and he said that the marks would be left as a result of braking, but that the tires might not be locked up, but would be hard braking. Mr. Estes' credibility was not an issue in these proceedings.

The last witness called by Respondent was the Lear co-pilot, Mr. Mathew Hogg. Mr. Hogg testified, under oath, that he never made the comments attributed to him by Ms. Winters or Inspector Morris. He stated that he was unaware of any of the allegations in the complaint until several weeks after the date in question. He stated that he was unaware that the Lear left the skid marks and that he observed nothing unusual on that date. He testified about the sworn affidavit he said he prepared and dated March 12, 2010.

Mr. Hogg's testimony is simply not credible. His statements to the FAA Inspector and Ms. Winter, made prior to the Administrator's Notice of Proposed Certificate Action on January 14, 2020, were inconsistent with his sworn affidavit and sworn testimony that he wasn't aware of the aircraft skidding or making the skid marks is also inconsistent. Testimony or statements made closer to the time of an incident should be given more credence. His testimony was also inconsistent with Ms. Lori Winters' statements.

There was offered and admitted the deposition testimony of Mr. Raymond Guderjohn, who is employed at Bombardier, the manufacturer of Lear jets. Mr. Guderjohn was called by the Administrator on the first day of this hearing. Respondent's counsel objected to Mr. Guderjohn's testimony because he was not listed as an expert witness. Because of this objection, his testimony was deferred to the second day of the hearing, several weeks later. During the intervening time span, Mr. Guderjohn's deposition was taken by Respondent's counsel, and the only questions asked of him were by Respondent's counsel. Counsel for the Administrator had no questions for Mr. Guderjohn, but offered his deposition into evidence as rebuttal to the Respondent's case-in-chief for reasons still not clear to this trial judge.

All of Mr. Guderjohn's testimony and the testimony of Mr. Estes about the demonstration staged with the Lear jet and another Cessna all go to the issue, or non-issue, of actual endangerment. The Board has held over the years that actual endangerment need not be shown to establish a violation of FAR 91.13(a), only potential endangerment. A discussion of this testimony is not necessary for the resolution of this case.

## Findings of Fact and Conclusions of Law

Both Administrator's counsel and Respondent's counsel, at the request of the undersigned after the Remand Order was issued by the Board, submitted findings of fact. These proposed findings of fact have been considered and, if not found herein, have been rejected.

### Findings of Fact

- 1) Respondent holds Airline Transport Pilot Certificate No. 00278133.
- 2) On October 12, 2009, Respondent was pilot-in-command of civil aircraft N145MW at Midland Air Park, Midland, Texas.
- 3) After landing at Midland Air Park on RWY25, Respondent turned left on taxiway Echo.
- 4) At this time, it was not raining and taxiways were dry.
- 5) At the intersection of taxiway Echo and taxiway Bravo, a Cessna 172 was holding short on taxiway Bravo awaiting an IFR clearance from ATC. On board the Cessna was Mr. David Goll, a flight instructor for Midland College, and Mr. Joseph Gillet, an instrument student pilot.
- 6) As Respondent approached that intersection, he asked the Cessna by radio to "trade places." The Cessna declined because they didn't have their clearance.
- 7) After the Cessna declined to "trade places," Respondent began a left turn down taxiway Bravo in front of the Cessna.
- 8) As the Lear jet operated by Respondent began its roll around the corner, the engines began to spool up and continued to increase power around the corner as the Lear jet came directly in front of the Cessna.

- 9) After the Lear turned directly in front of the Cessna and the engines continued to accelerate, the nose of the Lear dipped and smoke began to come from the left main gear of the Lear.
- 10) The Lear left 75 feet of skid marks in a straight line away from the Cessna.
- 11) The actions of the Lear pilot (Respondent) by accelerating his engine while holding the brakes directly in front of the Cessna with Messrs. Goll and Gillet caused the Cessna to buffet extremely, and the wings to rock up and down.
- 12) The actions of the Respondent required the pilots of the Cessna to hold the yoke forward and deflect the ailerons from one side to the other while simultaneously holding their brakes to keep the Cessna in place.

#### Conclusions of Law

The conduct of the Respondent by accelerating the Lear Jet engines while holding in its brakes was deliberate, careless, and reckless, causing endangerment to the Cessna and its occupants, and was in regulatory violation of FAR 91.13(a).

Therefore, the Order of Suspension suspending Respondent's ATP Certificate for a period of 90 days is affirmed.

And it is SO ORDERED.

ENTERED this 27<sup>th</sup> day of August, 2012, at Arlington, Texas.



WILLIAM R. MULLINS  
ADMINISTRATIVE LAW JUDGE

## **APPEAL (DISPOSITIONAL ORDER)**

Any party to this proceeding may appeal this order by filing a written notice of appeal within 10 days after the date on which it was served (the service date appears on the first page of this order). An original and 3 copies of the notice of appeal must be filed with the:

National Transportation Safety Board  
Office of Administrative Law Judges  
490 L'Enfant Plaza East, S.W.  
Washington D.C. 20594  
Telephone: (202) 314-6150 or (800) 854-8758

That party must also perfect the appeal by filing a brief in support of the appeal within 30 days after the date of service of this order. An original and one copy of the brief must be filed directly with the:

National Transportation Safety Board  
Office of General Counsel  
Room 6401  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
Telephone: (202) 314-6080  
FAX: (202) 314-6090

The Board may dismiss appeals on its own motion, or the motion of another party, when a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

A brief in reply to the appeal brief may be filed by any other party within 30 days after that party was served with the appeal brief. An original and one copy of the reply brief must be filed directly with the Office of General Counsel in Room 6401.

**NOTE: Copies of the notice of appeal and briefs must also be served on all other parties to this proceeding.**

An original and one copy of all papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel in Room 6401. Copies of such documents must also be served on the other parties.

The Board directs your attention to Rules 7, 43, 47, 48 and 49 of its Rules of Practice in Air Safety Proceedings (codified at 49 C.F.R. §§ 821.7, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

**ABSENT A SHOWING OF GOOD CAUSE, THE BOARD WILL NOT ACCEPT LATE APPEALS OR APPEAL BRIEFS.**