

SERVED: March 13, 2014

NTSB Order No. EA-5711

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 13th day of March, 2014

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19514
v.)	
)	
JEFFREY TIDWELL,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued July 30, 2013.¹ By that decision, the law judge determined respondent violated 14 C.F.R. § 61.15(e)² by failing to report a motor vehicle action to the Federal

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

² The pertinent portion of § 61.15(e) states, “[e]ach person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division ... not later than 60 days after the motor vehicle action.”

Aviation Administration (FAA) within the required 60-day time period, and violated 14 C.F.R. § 67.403(a)(1)³ by intentionally falsifying a medical certificate application. The law judge affirmed the Administrator's emergency order of revocation of respondent's airline transport pilot (ATP) certificate, flight engineer certificate, flight instructor certificate and second class airman medical certificate.⁴ We deny respondent's appeal.

A. *Facts*

1. *Traffic Stop and Related Actions*

On July 30, 2012, respondent was stopped on suspicion of driving under the influence of alcohol (DUI).⁵ A police officer drove respondent to a hospital to submit to a blood test and detained him until his wife picked him up.⁶ On the night he was detained, respondent signed a form titled "Omnibus [Driving While Intoxicated] Law Official Driver License Receipt and Notice of Suspension/Revocation or Disqualification of Driving Privilege."⁷ Below basic biographical information about respondent such as his name, address and driver's license number, the form stated, "[t]his is official notice that the suspension, revocation or disqualification of your driving privilege will begin at midnight of the 30th day from the date of arrest." The form further stated "[t] his document is a temporary driver's license and must be

³ The pertinent portion of section 67.403(a)(1) prohibits a person from making a fraudulent or intentionally false statement on an application for a medical certificate.

⁴ Respondent waived the applicability of expedited procedures normally applicable to emergency cases.

⁵ Whether respondent was actually arrested is disputed by respondent's criminal defense attorney. For reasons described herein, that distinction is immaterial here.

⁶ Tr. 87.

⁷ Exh. A-2 at 4 (hereinafter, "Omnibus form").

carried with you when driving. This temporary license expires at midnight, 30 days from the date of arrest.” Finally, immediately above respondent’s signature, the form stated the following:

By this notice I am advised that if I am intoxicated or if a chemical test of breath, blood or urine indicates an alcohol concentration of eight-hundredths of one percent (0.08%) or more for DWI offenses...my privileges to drive will be revoked, suspended, disqualified or denied...I also acknowledge receipt of this notice of suspension or revocation of my driving privilege and understand that my driving privilege will be suspended, disqualified or revoked 30 days from the arrest date, for a period of time ...”

On the night he was detained, respondent was provided with a form titled “Arkansas Statement of Rights – DWI, Refusal to Submit, or DUI.”⁸ Respondent signed the form and initialed next to a section which stated: “[i]f you choose to take the test or tests, and the results reflect an alcohol concentration of eight hundredths (.08) or more...your driving privilege will be suspended or revoked.”⁹

Sometime in early August 2012, respondent’s criminal defense attorney, Hubert Alexander, filed a form titled, “Request for Administrative Hearing to Contest Suspension, Revocation or Disqualification of Driving Privilege or Request Restricted Driving Permit” on behalf of respondent. A scheduling notice, dated August 9, 2012, mailed to respondent from the state of Arkansas, advised “[p]lease consider this our official response to your request for a hearing concerning your driving privilege in Arkansas” and setting a date for a hearing. Respondent attended the subsequent hearing telephonically on August 23, 2012. A “Driver Control Hearing Summary” was prepared at the conclusion of the hearing. In the area marked

⁸ Exh. A-2 at 6.

⁹ Id.

“Decision of Hearing Officer,” the summary reads “[t]his hearing is being held only to determine the eligibility of a restricted paper permit that is being denied. The suspension from 8/31/2012 to 02/28/201[3] is not being contested. Issued the interlock order.”¹⁰

Also on August 23, 2012, a state hearing officer issued the “Interlock Order” with a beginning date of August 31, 2012 and an ending date of February 28, 2013. The order included the following statement:

Before your interlock restricted license is issued, you must bring proof of installation to the Driver Control office. After your interlock restriction has expired, you must have the device removed from your vehicle by the interlock provider and provide this department with proof of removal prior to being issued an unrestricted license.¹¹

Respondent signed an installation form for the interlock device the following day.¹²

Respondent attended and completed a victim impact panel¹³ on September 4, 2012 and completed an alcohol education program on April 13, 2013. He paid a reinstatement fee in the

¹⁰ Id. at 3.

¹¹ Id. at 12.

¹² Id. at 13. The Arkansas Department of Health, Office of Alcohol Testing defines a Breath Alcohol Ignition Interlock Device as follows:

An electronic device with microcomputer logic and internal memory, having a breath alcohol analyzer as a major component, that interconnects with the ignition and/or other control systems of a motor vehicle for the purpose of preventing that motor vehicle from being started if the driver has a breath alcohol content which exceeds the preset limit (setpoint). Further, its purpose is to deter and record attempts to circumvent or tamper with the device and to encourage the driver to adhere to the requirements of the court.

Arkansas Regulations for Breath Alcohol Ignition Interlock Devices, Arkansas Department of Health: Office of Alcohol Testing (Dec. 15, 1994) at 2, *available at* <http://www.healthy.arkansas.gov/aboutADH/RulesRegs/IgnitionInterlock.pdf>.

¹³ Victim impact panels are programs in which victims relay personal stories of how impaired drivers forever changed their lives. For Arkansas drivers whose licenses have been suspended, attendance is mandatory prior to license reinstatement.

amount of \$150 on April 18, 2013, which permitted reinstatement of his unrestricted driver's license.¹⁴

2. Application for Medical Certificate and Subsequent Enforcement Action

On April 17, 2013, respondent reapplied for his second-class medical certificate. He completed his application by using the FAA's online system called MedXPress.¹⁵ Respondent filled out the FAA Form 8500-8 online, printed and signed it.¹⁶ The following day, he visited the office of Dr. John L. Gustavus for the in-person portion of the exam.

In filling out the application, respondent selected the "no" box for question 18.v.

Question 18.v. inquires as to whether an airman has a

History of (1) an arrest(s) and/or conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any arrest(s), and/or conviction(s), and/or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an educational or a rehabilitation program.

Respondent did not allege he discussed his answer to question 18.v. with Dr. Gustavus at any time before or during the in-person exam.

Following a routine check of driving records, FAA staff identified respondent's application as containing an incorrect answer. Deanna K. Way, a Special Agent with the FAA Security and Investigations Division, sent respondent a letter of investigation (LOI) on or about May 13, 2013, outlining the allegations and providing respondent an opportunity to reply.¹⁷ In

¹⁴ Exh. A-2 at 2.

¹⁵ See <https://medxpress.faa.gov/medxpress>.

¹⁶ Exh. A-1 at 5.

¹⁷ Exh. A-3 at 1.

an email reply message on May 15, 2013, respondent acknowledged he had been pulled over in August, not July, 2012, and stated the police officer told him he “was .09.” Respondent stated he “thought this matter was not reportable till convicted.”¹⁸ Following respondent’s reply to the LOI, on June 13, 2013, the Administrator issued an Emergency Order of Revocation.

B. Law Judge’s Initial Decision

In his initial decision, the law judge reviewed the relevant facts related to the traffic stop, each exhibit offered into evidence and each witness who testified. The law judge addressed the question of whether respondent was legally arrested, and acknowledged the testimony indicating confusion could exist regarding whether a person had been arrested. The law judge summarized respondent’s testimony and that of the character witness called in support of respondent.¹⁹

The law judge noted respondent’s attorney, Mr. Alexander, who represented respondent for the DUI matter, testified he did not discuss any potential impacts of a DUI arrest or conviction or suspended driver’s license with respondent. The law judge stated Mr. Alexander was not aware respondent was required to apply for an FAA medical certificate at the time he counseled respondent.²⁰

The law judge acknowledged Board precedent regarding question 18.v. Addressing the credibility of respondent’s testimony, the law judge first noted respondent’s level of experience, commenting “a person who holds an ATP has a lot more responsibility and experience just to get the certificate” and “it’s hard to believe in our society today, and particularly if you hold an ATP

¹⁸ Exh. A-4.

¹⁹ Initial Decision at 142-43.

²⁰ Id. at 142.

certificate, that you can't have heightened awareness of the importance of these answers on a medical application."²¹

The law judge next addressed respondent's testimony and response to the LOI in which respondent said, "I thought this matter was not reportable till convicted."²² While acknowledging respondent's comment may have been a mistake, the law judge concluded "that sort of mistake and that comment and the whole tenor...of respondent's case in chief simply lacks credibility."²³ Ultimately, in finding the Administrator met its burden of proof on intentional falsification, the law judge concluded "respondent's testimony here was not credible and his response to the LOI shows that his attitude here is just simply not credible."²⁴

C. Issues on Appeal

On appeal, respondent contends he did not know the information he provided was false.²⁵ Respondent also argues the law judge's decision was arbitrary and capricious because the Administrator failed to prove respondent had actual knowledge that his answer to question 18.v. was false. Respondent further asserts the law judge did not properly address the credibility of respondent's explanation that his incorrect answer to question 18.v. was an innocent mistake resulting from misunderstanding the question as opposed to an intent to provide false information.

²¹ Id. at 144-45.

²² Exh. A-4.

²³ Initial Decision at 145.

²⁴ Id.

²⁵ Respondent does not appeal the law judge's determination that respondent violated 14 C.F.R. § 61.15(e).

Respondent also appeals the law judge's decision to uphold the sanction of revocation. Respondent argues the law judge did not properly evaluate mitigating factors such as respondent's background, experience, reputation in the aviation community and family and business factors which should have supported a modification of the sanction to suspension.

2. Decision

On appeal, we review the law judge's decision *de novo*, as our precedent requires.²⁶

A. Knowledge of Falsity

Respondent argues he did not know the answer he provided in response to question 18.v. was false. Respondent claims although he read the question at the time he completed the form, he did not understand it.²⁷

Title 14 C.F.R. § 67.403(a)(1) prohibits "a fraudulent or intentionally false statement on any application for a medical certificate."²⁸ With regard to the issue of intentional falsification of a medical certificate application, we long have adhered to a three-prong test. The Administrator must prove an airman: (1) made a false representation, (2) in reference to a material fact, and (3) with knowledge of the falsity of the fact.²⁹ Respondent acknowledges he made a false representation and the representation was in reference to a material fact.³⁰

²⁶ Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991).

²⁷ Tr. 99.

²⁸ 14 C.F.R. § 67.403(a)(1).

²⁹ Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976) (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

³⁰ Appeal Br. at 3.

In Administrator v. Dillmon,³¹ after remand from the Court of Appeals for the District of Columbia Circuit,³² we clarified our analysis of this three-prong test. We first consider our law judges' credibility findings, as well as other relevant evidence, concerning a respondent's subjective understanding of a question on the medical application. If a respondent contends he or she is confused about the meaning of a question or asserts he or she provided an incorrect answer as a result of allegedly misunderstanding the question, our law judges must make a credibility determination concerning the alleged confusion and the respondent's state of mind at the time he or she completed the application.³³ We defer to our law judge's credibility findings unless those findings are arbitrary and capricious.³⁴ In Administrator v. Porco, we held we will consider whether factual findings in the record support the law judge's credibility determination.³⁵

The only evidence supporting respondent's claim that he made an innocent mistake was his own testimony. Respondent testified he believed he only had to report a conviction in response to question 18.v. in part because "that's what I'd been told by counsel"³⁶ and "because I have spoken with my attorney Hubert Alexander."³⁷ Mr. Alexander, however, testified "I didn't

³¹ NTSB Order No. EA-5528 (2010).

³² 588 F.3d 1085 (D.C. Cir. 2009).

³³ Supra 31 at 12-14.

³⁴ Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), *aff'd*, 472 Fed.Appx. 2 (D.C. Cir. 2012).

³⁵ Id. at 22, 28-29.

³⁶ Tr. at 98.

³⁷ Tr. at 85.

tell him how to fill out any medical forms.”³⁸ When asked if he had seen respondent’s medical application, Mr. Alexander responded “I didn’t even know he had to fill out one.”³⁹ When asked about respondent’s FAA reporting requirements, Mr. Alexander testified he never spoke with respondent about the FAA or whether respondent had been convicted, but only discussed the status of respondent’s driver’s license.⁴⁰ Respondent acknowledged he could have asked his aviation medical examiner about the question if he had any uncertainty about the correct answer, but he did not.⁴¹

On the evening he was stopped⁴² on suspicion of driving under the influence of alcohol, respondent received and signed a number of documents. As discussed above, respondent signed the Omnibus form, which advised respondent of the suspension of his regular driver’s license, and the issuance of his temporary driver’s license, which would expire 30 days from the date of respondent’s arrest. In signing the form, respondent acknowledged his receipt of the “notice of suspension or revocation of my driving privilege” and indicated he understood his “driving privilege will be suspended, disqualified or revoked 30 days from the arrest date, for a period of

³⁸ Tr. at 65.

³⁹ Tr. at 71.

⁴⁰ Id.

⁴¹ Tr. at 100.

⁴² Respondent raises the possibility he may not have been legally arrested on the night in question, pointing to “irregularities in the handling of [respondent’s] citation for DWI” and alleged problems with the timing of the various breath and blood tests. Appeal Br. at 4. Respondent argues the ambiguity of whether he was actually arrested makes it “understandable that there would be issue with his answer to Question [18v].” Id. at 5. For purposes of this appeal, it is irrelevant whether respondent was legally arrested or whether the blood test was performed in accordance with Arkansas law, because the evidence in the record before us establishes respondent’s driver’s license was suspended.

time.”⁴³

The Omnibus form stated the result of respondent’s portable breath test was “.10.”⁴⁴ In responding to the Administrator’s LOI, respondent claimed the police officer told him the result was “.09.”⁴⁵ Both reported results are over the 0.08 percent limit recited in the notice respondent signed on the Omnibus form.

Likewise, the same evening, respondent signed a form titled “Arkansas Statement of Rights—DWI, Refusal to Submit, or DUI.”⁴⁶ Respondent specifically initialed next to a section which read: “[i]f you choose to take the test or tests, and the results reflect an alcohol concentration of eight hundredths (.08) or more...your driving privilege will be suspended or revoked.”⁴⁷

Shortly after respondent’s traffic stop, he retained the services of Mr. Alexander to represent him in the criminal case. At a hearing to contest the automatic suspension of respondent’s driver’s license the hearing officer told respondent he would need to use an interlock device each time he drove. The hearing officer’s “Driver Control Hearing Summary,” stated respondent did not contest the suspension of his driver’s license.⁴⁸ While respondent attended this hearing telephonically, the space on the Hearing Summary where the respondent

⁴³ Exh. A-2 at 4

⁴⁴ Id. at 5.

⁴⁵ Exh. A-4.

⁴⁶ Exh. A-2 at 6.

⁴⁷ Id.

⁴⁸ Ex. A-2 at 3.

would normally have signed includes a handwritten annotation stating, “Phone” and “Faxed.”⁴⁹

The hearing officer also issued the “Interlock Order” with a beginning date of August 31, 2012 and an ending date of February 28, 2013. The order includes instructions to provide proof of installation and removal of the interlock device “prior to being issued an unrestricted license.”⁵⁰ The following day, respondent signed an installation form for the interlock device.⁵¹

In summary, the record contains a total of seven documents which reference a suspension of respondent’s driver’s license or respondent’s driving privilege. Respondent personally signed three of these seven documents, was present telephonically when two were discussed, received one from the state of Arkansas by mail, and allowed completion of one on his behalf by his attorney.

The law judge found not credible respondent’s testimony on the issue of his subjective knowledge at the time he answered question 18.v. and tied this determination to facts in the record.⁵² The documentary evidence, combined with the law judge’s finding that respondent’s testimony was not credible, support the conclusion respondent’s false answer was not an innocent mistake. We therefore affirm the law judge’s decision as to the alleged violation of 14 C.F.R. § 67.407(a)(1).

B. Mitigating Factors for Sanction Reduction

Respondent lists a number of facts he believes support mitigation of the FAA revocation

⁴⁹ Id.

⁵⁰ Id. at 12.

⁵¹ Id. at 13.

⁵² Initial Decision at 145.

order. In particular, respondent asserts his family and business, his flying experience, his leadership role in the aviation community and presentations he has made on safety and professionalism all counsel in favor of reducing or eliminating the sanction. While a finding of a violation of the Federal Aviation Regulations undoubtedly impacts a respondent's family, business and professional contacts, Board jurisprudence has long held those factors do not serve to reduce the sanction.⁵³ If anything, respondent's many years of aviation experience and professional contacts increase the seriousness of the violation, as such experience indicates respondent should be held to a high standard of care.⁵⁴ Respondent testified he is a leader in the aviation community, and delivers presentations on safety and professionalism. For such a pilot to knowingly falsify an application for a medical certificate undermines the trust which is necessary for safety in air commerce. We affirm the law judge's decision as to the imposed sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's decision is affirmed.

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

⁵³ See, e.g., Administrator v. Langford, NTSB Order No. EA-5673 at 16 (2013) (citing Administrator v. Jablon, NTSB Order No. EA-5460 at 16 (2009)).

⁵⁴ See Administrator v. Moeslein, NTSB Order No. EA-5354 at 14, 16-17 (2008) (stating holders of ATP certificates are held to the highest degree of care, and declining to reduce sanction on the basis of economic hardship).

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

* * * * *

In the matter of: *

MICHAEL P. HUERTA, *
ADMINISTRATOR, *
FEDERAL AVIATION ADMINISTRATION, *

Complainant, *

v. *

Docket No.: SE-19514
JUDGE MULLINS

JEFFREY TIDWELL, *

Respondent. *

* * * * *

Courtroom 2A
U.S. Courthouse Annex
500 West Capitol Avenue
Little Rock, Arkansas

Tuesday,
July 30, 2013

The above-entitled matter came on for hearing, pursuant
to Notice, at 9:00 a.m.

BEFORE: WILLIAM R. MULLINS,
Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE MULLINS: This has been a proceeding before the National Transportation Safety Board held here in Little Rock. Today is the 30th day of July 2013, and the matter came on, on the appeal of Jeffrey Tidwell from an Emergency Order of Revocation that has revoked his airline transport pilot certificate, his flight engineer certificate, and flight instructor certificate.

The Order of Revocation serves as the complaint in these proceedings and was filed on behalf of the Administrator through regional counsel of the Aeronautical Center of Oklahoma City. The matter has been heard before me, William R. Mullins. I am an Administrative Law Judge for the National Transportation Safety Board, and as is provided by the Board's rules I will issue a bench decision at this time.

The matter came on for hearing pursuant to the notice given to the parties. Actually, it was set back on the 2nd of July as an emergency case, and the Respondent, through counsel, waived the emergency time provisions and the matter then was scheduled for today, the 30th of July, and came on for hearing here in Little Rock.

1 related motor vehicle offense in the State of Arkansas. As a
2 result of that, he was issued a ticket, which interestingly is the
3 only exhibit that the Respondent had, which was R-1, which was the
4 ticket which shows a DWI offense, no seat belt, and tint. I'm not
5 sure what that is except maybe it has to do with the coloring on
6 the windows of the vehicle. That's not important to these
7 proceedings.

8 The Respondent has filed his answer. He's admitted that
9 he holds a certificate and he's admitted the incident on July 30,
10 but has basically denied the rest of the allegations.

11 The first exhibit offered by the Administrator was
12 Administrator's Exhibit A-1, which was the certified Blue Ribbon
13 copy of the airman medical certificate of the Respondent, and the
14 specific issue relates to page 3 of that probably 70 or 80-page
15 document, which is the application for medical certificate that
16 was submitted on or about April 18 of this year.

17 Specifically 18v, which has its own little paragraph and
18 highlights, highlighted "arrest, conviction and/or administrative
19 action history -- see instructions page." And under that
20 paragraph marked "No" is "History of: (1) any arrest(s) and/or
21 conviction(s) involving driving while intoxicated by, while
22 impaired by, or while under the influence of alcohol or a drug; or
23 (2) history of any arrest(s) and conviction(s) and/or
24 administrative action(s) involving an offense which resulted in
25 the denial, suspension, cancellation, or revocation of driving

1 privileges or which resulted in an attendance at an educational or
2 a rehabilitation program."

3 The second exhibit that the Administrator had was a
4 certified driving record of the Respondent from the State of
5 Arkansas, and on page two of that exhibit it shows that there was
6 a suspension, a reinstatement fee paid, I assume for the
7 reinstatement of the license, and then it also shows completion of
8 alcohol education. It also, in another page, shows that the
9 arresting officer and a roadside -- I guess it's a device that
10 patrolmen carry in their cars -- shows that the Respondent tested
11 .10 on a breathalyzer, although it came out in the testimony that
12 that particular breathalyzer would not be admissible in state
13 courts.

14 However, for our purposes today we're not -- my focus is
15 not on whether or not there was a .10 or any actual amount other
16 than this citation, the suspension of the driver's license
17 reflected in A-2 and so forth. It also talks about an interlock
18 device, and I don't think there was particularly any testimony
19 about that, but it's somehow used in allowing a defendant some
20 restricted driving privileges.

21 Exhibit A-3 was a letter of investigation that was
22 issued by Ms. Deanna Way to the Respondent. Exhibit A-4 is the
23 Respondent's response to that letter of investigation, and then
24 Exhibit A-5 was the guide from the airman medical examiners, I
25 guess -- it's captioned, "Guide for Aviation Medical Examiners,"

1 and it specifically relates to item 18 of the medical application.
2 As I said, there was one exhibit from the Respondent which was the
3 actual driving citation that was issued that evening.

4 The first witness called by the Administrator was Deanna
5 Way. She's a special agent with the Security and Investigation
6 Division of the Federal Aviation Administration in Oklahoma City.
7 She testified -- I think she testified at one point that she had 4
8 years experience for the FAA but then later said 4 months, but she
9 had come over to that position from the Drug Enforcement
10 Administration, a number of years there. Her job is to review
11 these medical applications and submit them.

12 I guess -- I don't know whether all of them are
13 submitted. Routinely some of them are submitted to the National
14 Driver Register and if they get a hit back showing some
15 involvement, and as a result of that, in this case she sent a
16 letter, which is in the last page of Exhibit A-2, a letter to the
17 State of Arkansas asking for the driving record of the Respondent.
18 After receiving that, she did issue a letter of investigation and
19 that prompted the response to that letter of investigation that
20 was then submitted back by the Respondent. She did opine that the
21 answer "No" on 18v, particularly with the driving record displayed
22 or shown in Exhibit A-2 from the State of Arkansas, showed a lack
23 of qualification because of the noncompliance with the question
24 concerning alcohol incidents or arrests.

25 The next witness called by the Administrator was

1 Dr. Giovanetti, Chief of the Medical Officer Branch at the
2 Aeronautical Center in Oklahoma City. She identified and
3 discussed the importance of the information that is sought by the
4 Medical Certification Division concerning alcohol-related
5 offenses. She also ID'd, as I said, Exhibit A-5.

6 The Respondent had several witnesses. The first witness
7 the Respondent called was Mr. Hubert Alexander, who was the
8 Respondent's attorney on his DUI, which his testimony and the
9 Respondent's testimony was that it still hasn't gone to trial yet.
10 He said that he didn't discuss with his client any of the aviation
11 impact of this alleged offense. In fact, he did testify he didn't
12 know the Respondent was required to even make a medical
13 application. But he did testify that there could be confusion
14 about whether or not a person was under arrest, and he gave that
15 example about the policeman putting somebody in the rear seat of a
16 patrol car and whether that constituted arrest in the mind of the
17 defendant or whether he thought he was being put back there or the
18 patrolman was putting him back there just to get him out away from
19 traffic or for security reasons.

20 The second witness was the Respondent. He testified
21 about his business he runs with his father, Tidwell Flying
22 Service, that has 10 employees with 3 aircraft and 3 pilots, I
23 believe. I think two pilots plus the Respondent. Their primary
24 business is agriculture services, although the Respondent did
25 testify that he has contracts where he goes outside the state and

1 does some fire suppression missions but that he was the only one
2 of the pilots who took those missions and worked those contracts.

3 He also testified, and it was testified by some of the
4 other witnesses, that Mr. Tidwell currently is the president of
5 the Arkansas Agricultural Aviation Association, which is made up
6 of, one of the witnesses said, 150 or 160 ag operators across the
7 state. Mr. Tidwell -- excuse me if I say Tidlund for a time. I
8 mean Tidwell. I have a friend named Tidlund; that's the reason.
9 Anyhow, Mr. Tidwell said he'd been active in many different
10 organizations and they all had as their primary mission safety
11 issues.

12 The last three witnesses called by the Respondent was
13 David Little, John Knight, Ron Harrod. All three of those
14 individuals have known the Respondent for 20 years or more. They
15 all testified that he was a straight shooter and he was always
16 interested safety issues. Those were the exhibits and the
17 witnesses.

18 I want to make just some general comments about the
19 case, and then I will get to the decision. First, there was a
20 major event that occurred in the Respondent's life one year ago
21 tonight, the 30th of July 2012. And it was major not only on an
22 individual level, but it was also major for a pilot holding an air
23 transport pilot certificate who makes a living using that
24 certificate.

25 I have been a Judge for many years, and one of the

1 things that I found and I know everyone in the courtroom has seen
2 over the last number of years, the increased emphasis on alcohol
3 and drug abuse in all walks of life, and particularly in
4 automobile operations and aircraft operations. Unfortunately, in
5 my job, and I do get to hear some interesting cases, but these
6 kinds of cases are really difficult and I see long-time pilots
7 with airlines who, for whatever reason, flunk a random drug test
8 or find themselves in the same situation that this Respondent has
9 found himself in. And it's hard to believe in our society today,
10 and particularly if you hold an ATP certificate, that you can't
11 have heightened awareness of the importance of these answers on a
12 medical application and the impact that these acts have in our
13 everyday lives.

14 The Board has said that a person of average
15 intelligence, and I think counsel cited a case, should understand
16 what question 18v of the medical application means. Certainly,
17 notwithstanding that Board decision, the Pilot's Bill of Rights
18 has directed an independent agency, and I'm not sure right now, I
19 don't recall that agency, but this agency has been directed to do
20 an independent study of the medical certification and this
21 application process and medical certification in the pilot
22 community. And from the Pilot's Bill of Rights, which was about a
23 year ago this month, that was a year before that study was to even
24 get started, I think. I do anticipate or at least I'm told by
25 other people who work in this area, and obviously I do, but that

1 it's going to have some impact on the way this application is
2 written. But until there's that impact, it's still pretty clear
3 what that document says.

4 And as I said and I'll keep emphasizing, as the Board
5 has said, an ATP, a person who holds an ATP has a lot more
6 responsibility and experience just to get the certificate. But
7 Mr. Tidwell said in his response to the LOI that he didn't think
8 this thing was even reportable until there was a conviction. Now,
9 that may be a mistake on his part, but it's more than just a
10 mistake for the purposes of my decision today. That sort of
11 mistake and that comment and the whole tenor, I think, of
12 Respondent's case in chief simply lacks credibility.

13 There was, as I said, a major event in Mr. Tidwell's
14 life that evening a year ago. If you're a professional pilot, it
15 has to be big, and the tragedy here or the sadness here is that if
16 he would have just simply reported what happened to his AME, it
17 probably wouldn't -- other than having to provide some of these
18 documents to his AME, his medical certificate would have been
19 issued without any question, as I understand the guide provided in
20 A-5 as to medical examiners. However, because I find that the
21 Respondent's testimony here was not credible and his response to
22 the LOI shows that his attitude here is just simply not credible,
23 I find that the Administrator has established the Order of
24 Revocation and the issues therein, and that the appropriate
25 sanction would be as requested, one of revocation.

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ORDER

IT IS THEREFORE ORDERED that safety in air commerce and safety in air transportation requires an affirmation of the Administrator's Order of Revocation as issued, and specifically I find that a preponderance of the evidence has established a regulatory violation of FAR 61.15(e) and FAR 67.403(a)(1), and that the appropriate sanction herein would be one of revocation.

EDITED ON

AUGUST 22, 2013

WILLIAM R. MULLINS

Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE MULLINS: Ms. Hamilton, you have the right to appeal this order today, and you may do so by filing your Notice of Appeal within 10 days of this date. The Notice of Appeal must go to the Office of Administrative Law Judges at Room 4704 at 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594, and then within 50 days of this date, to perfect that appeal, you need to file a brief in support of that appeal. The brief goes to the same street address but to the Office of General Counsel at Room 6401. The timing not only for your notice of appeal but your briefs is very critical. Absent good cause the Board will summarily dismiss any appeals -- or not entertain any appeals for any late-filed responses.

1 Ms. Hamilton, if you'd step up here, please, I will hand
2 you a written copy of your rights to appeal, and it has those
3 addresses.

4 MS. HAMILTON: Thank you, Your Honor.

5 ADMINISTRATIVE LAW JUDGE MULLINS: In the event there is
6 an appeal, the Administrator has those response times and I have a
7 copy of that if you'd like one, Mr. Webster. However, as many
8 times as you've appealed my decisions I assume you know all of
9 that.

10 MR. WEBSTER: Thank you, Your Honor. We're aware of the
11 appeal provisions.

12 ADMINISTRATIVE LAW JUDGE MULLINS: I assumed you had a
13 file of those things in your office.

14 Ms. Hamilton, do you have any questions about the
15 decision?

16 MS. HAMILTON: Your Honor, the sanction of revocation
17 for what period? For what period is the revocation?

18 ADMINISTRATIVE LAW JUDGE MULLINS: I'm sorry, would you
19 step up the mike, please?

20 MS. HAMILTON: The sanction of revocation that you've
21 affirmed, is that for a 1-year period?

22 ADMINISTRATIVE LAW JUDGE MULLINS: Yes. Unless there's
23 -- as far as my decision is concerned, that's where it is. I
24 don't know what's going on. The revocation, the standard
25 revocation is 1 year. You know, if there was an appeal and

1 further negotiations, the Administrator can modify that, but I
2 can't.

3 MS. HAMILTON: Thank you, Your Honor.

4 ADMINISTRATIVE LAW JUDGE MULLINS: Any questions,
5 Mr. Webster?

6 MR. WEBSTER: No sir.

7 ADMINISTRATIVE LAW JUDGE MULLINS: That will conclude
8 the proceedings.

9 MS. HAMILTON: Your Honor, I'm sorry. Just so there's
10 no misunderstanding, did the Court take the position that it did
11 not have the authority to modify the sanction of 1-year
12 revocation?

13 ADMINISTRATIVE LAW JUDGE MULLINS: No, that's not what I
14 said. I said my decision today is a 1-year revocation.

15 MS. HAMILTON: Thank you, Your Honor.

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17 (Whereupon, at 1:59 p.m., the hearing in the
18 above-entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Jeffrey Tidwell

DOCKET NUMBER: SE-19514

PLACE: Little Rock, Arkansas

DATE: July 30, 2013

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

Michael A. Washkowiak
Official Reporter