

SERVED: March 4, 2016

NTSB Order No. EA- 5771

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 4th day of March, 2016

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19818
v.)	
)	
MARTIN R. YERBY,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued June 1, 2015.¹ By that decision, the law judge determined the Administrator

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

proved respondent violated 14 C.F.R. § 43.12(a)(1)² when he caused a false entry to be made in aircraft records indicating a preflight inspection had been performed as required by a Special Flight Permit (SFP) when the inspection had not occurred. We deny respondent's appeal of the Administrator's emergency order of revocation.³

A. Facts

On November 4, 2014, five inspectors from the Federal Aviation Administration's (FAA's) Special Emphasis Investigations Team (SEIT Team) arrived unannounced at CSG Aviation, LLC (CSG), a Part 135 certified air carrier, in Columbus, Georgia, to conduct an operational control inspection in response to a hotline complaint.⁴ Respondent, the Director of Maintenance for CSG, was present when the SEIT Team arrived.⁵ During the inspection, it came to the attention of the inspectors that the fuel pump for N718JP, a Pilatus PC 12/45 and one of CSG's aircraft, was overdue for maintenance.⁶ The inspectors asked respondent how he planned to handle the situation, and respondent stated he would obtain a Special Flight Permit (SFP, also known as a ferry permit) to allow N718JP to travel for the purpose of a ferry flight from West Houston Airport (KIWS) to David Wayne Hooks Memorial Airport (KDWH), both in Houston,

² Section 43.12(a)(1) states: "[n]o person may make or cause to be made ... [a]ny fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part."

³ The Administrator initiated this case as an emergency under 49 U.S.C. §§ 44709 and 46105(c). Respondent subsequently waived the expedited procedures normally applicable to emergency cases.

⁴ Tr. 20-21, 27, 33, 45, 84.

⁵ Tr. 85. The SEIT Team consisted of FAA Inspectors: Kenneth Feist, Henry DiGiovanni, Misty Peña, Scott Ford, and Don Riley. Tr. 27, 86.

⁶ The FAA inspectors learned this information from an October 27, 2014 status report for N718JP pinned to a status board and a more recent status report for N718JP provided by respondent showing the fuel pump was overdue for maintenance. Tr. 33, 48-49, 57-58, 88, 98.

Texas, for maintenance.⁷ Shortly thereafter, respondent submitted an application to the Atlanta Flight Standards District Office (FSDO) for an SFP to allow the transport of the aircraft for maintenance. The FSDO issued the SFP on November 4, 2014, with the following limitation:

Prior to the flight, the aircraft must be inspected by a certified mechanic or repair station to determine the aircraft is safe for the intended flight. The result of that inspection will be entered in the permanent aircraft records with the following similarly worded statement: **“This aircraft has been inspected and has been found safe for the intended flight in accordance with Special Flight Permit dated MM/DD/YY.”**⁸

Respondent emailed copies of the SFP to the pilots, operations personnel, and CSG’s president, but did not transmit the SFP to CSG’s technicians and did not inform them to conduct the SFP required preflight inspection on N718JP.⁹ The same day, N718JP was operated on a ferry flight from KIWS to KDWH; however, no one conducted the required preflight inspection or made a maintenance entry in the aircraft maintenance log that day.¹⁰ Later on November 4, Inspector DiGiovanni asked respondent who made the maintenance log entry for the preflight inspection, and respondent replied no one had made such a maintenance log entry.¹¹ On November 5, respondent instructed CSG’s Lead Technician, Louis Bernard, to make a maintenance log entry indicating completion of the preflight inspection of N718JP had occurred on November 4 and to email a copy of the log to respondent.¹² Respondent subsequently gave the copy of the maintenance log entry to the SEIT team inspectors.¹³

⁷ Tr. 29, 52.

⁸ Exh. A-2 (emphasis in original).

⁹ Tr. 104-05.

¹⁰ Tr. 62, 111-12.

¹¹ Tr. 62, 149.

¹² Tr. 107.

¹³ Tr. 108, 158; Exh. A-3.

B. Procedural Background

On May 9, 2015, the Administrator issued an emergency order revoking respondent's Mechanic Certificate with Airframe and Powerplant ratings. The order, which became the complaint in this case, alleged respondent violated 14 C.F.R. § 43.12(a)(1) and lacked the qualifications necessary to hold a mechanic certificate. The law judge conducted a hearing on June 1, 2015, after which respondent waived the expedited procedures applicable to emergency cases.

C. Law Judge's Oral Initial Decision

As a preliminary matter, the law judge considered respondent's Motion to Compel Discovery and Motion for Sanctions, in which Respondent argued the Administrator's responses to two interrogatories were insufficient.¹⁴ The law judge denied both motions.¹⁵ At the conclusion of the hearing, the law judge summarized the testimony and evidence received at the hearing and made credibility determinations. The law judge concluded the Administrator established by a preponderance of reliable, probative, and credible evidence respondent intentionally caused a false entry to be made in the aircraft maintenance log for N718JP and that respondent failed to establish the affirmative defenses he had listed in his answer to the Administrator's complaint.¹⁶ He based this determination on his credibility findings, which were

¹⁴ Tr. 6-11.

¹⁵ Tr. 10-11.

¹⁶ Initial Decision at 195-96. Respondent's first defense argued the Administrator failed to state any claim upon which relief may be granted. Respondent also argued the Administrator's claims were barred by factual impossibility, fraud, abuse of process, malicious prosecution, bad faith, duress, laches, and equitable estoppel. The law judge correctly noted the burden of proof shifts to respondent to prove his affirmative defenses and concluded respondent failed to establish the defenses. The law judge also specifically found respondent failed to show prejudice under the doctrines of laches and estoppel. *Id.* at 195.

favorable to the Administrator's witnesses and adverse to respondent.¹⁷ In making such determinations, the law judge considered the demeanor of the witnesses and noted an inconsistency in respondent's testimony.¹⁸ The law judge also noted respondent's self-interested motive to establish he did not know the maintenance log entry was false.¹⁹ The law judge affirmed the Administrator's emergency order of revocation.²⁰

D. Issues on Appeal

Respondent contends the law judge erred in determining the false entry was material and in determining respondent intended to cause the false entry to be made. In particular, respondent argues the inspection for the SFP was never required; therefore, the false entry concerning the completion of the inspection was immaterial. In addition, respondent contends the law judge erred in denying his Motion to Compel and Motion for Sanctions, which respondent had filed in the discovery phase of the case. Respondent contends the law judge's denial of the motions caused severe prejudice to respondent's ability to present his case.

2. Decision

On appeal, we review the law judge's decision *de novo*, as our precedent requires.²¹

A. Intentional Falsification

1. *Three-Prong Test*

¹⁷ Id. at 194-96.

¹⁸ Id. at 188-89, 191.

¹⁹ Id. at 191.

²⁰ Id. at 202.

²¹ Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2-3 n.5 (1993); Administrator v. Wolf, 7 N.T.S.B. 1323, 1325 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (stating, in making factual findings, the Board is not bound by the law judge's findings).

With regard to the issue of intentional falsification, 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.²² Concerning the first prong of the test, the parties do not dispute that respondent caused Mr. Bernard to make a false entry in the aircraft maintenance log of N718JP.²³ Specifically, Mr. Bernard noted, “Performed ferry flight inspection per FAA Ferry Permit Form 8130-6. Aircraft is deemed ok for ferry flight to DWH Airport.”²⁴ In his answer to the complaint and during his testimony at the hearing, respondent acknowledged he caused Mr. Bernard to make this entry.²⁵ As a result, the evidence establishes the Administrator fulfilled the first prong of the Hart v. McLucas test.

The second prong of the Hart v. McLucas test requires the Administrator show the respondent made the false representation concerning a material fact. Respondent testified he discerned a data entry error concerning the fuel pump before N718JP departed KIWS on November 4.²⁶ He explained once he input the correct information into the tracking system, the status report for N718JP showed the fuel pump was actually not overdue for maintenance.²⁷ As a result, the SFP was not necessary, and the preflight inspection was not required.²⁸ Respondent argues, therefore, the false maintenance log entry indicating completion of the preflight

²² Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976).

²³ Complaint ¶¶ 7-8; Answer ¶¶ 7-8; Tr. 108, 112.

²⁴ Exh. A-3.

²⁵ Answer ¶ 8.

²⁶ Tr. 97-98.

²⁷ Tr. 99.

²⁸ Tr. 99.

inspection was not material because the SFP was not needed for N718JP's November 4 flight from KIWS to KDWH.²⁹

In order for a statement to be material, it need only be "capable of influencing" an FAA decision.³⁰ In the case *sub judice*, whether the SFP was ultimately required for the November 4 flight is not relevant. The false statement at issue is the maintenance log entry that N718JP was inspected and found safe for the November 4 ferry flight. Regardless of whether the inspection was actually necessary, the false maintenance log entry led the SEIT inspectors to conclude the inspection had taken place in accordance with the requirements of the SFP. The inspectors, therefore, relied upon the accuracy of the maintenance log entry and ceased their questioning concerning the fuel pump during their operational control inspection.³¹ In addition, the false maintenance log entry in N718JP's permanent aircraft records would have become part of the aircraft's maintenance history and, therefore, had the potential to influence future FAA decisions.³² Therefore, the veracity of the maintenance log record, which contained a false entry, influenced and would continue to influence the FAA. The law judge did not err in determining the Administrator fulfilled the second prong of the Hart v. McLucas intentional falsification standard.

The third prong of the Hart v. McLucas test requires respondent to have known the maintenance log entry was false when he caused it to be made. In Administrator v. Reynolds, the

²⁹ Appeal Br. 9-12.

³⁰ Janka v. Department of Transportation, 925 F.2d 1147, 1150 (9th Cir. 1991); Twomey v. NTSB, 821 F.2d 63, 66 (1st Cir. 1987); Administrator v. Richards, NTSB Order No. EA-4813 at 6 n.6 (2000) (citing Twomey, 821 F.2d at 66); Administrator v. Anderson, NTSB Order No. EA-4564 at 5 n.6 (1997); Administrator v. Cassis, 4 N.T.S.B. 555, 557 (1982);

³¹ Tr. 158.

³² Respondent admitted the false maintenance log entry was capable of influencing a future FAA decision if Mr. Bernard used the log entry to demonstrate his aircraft maintenance experience as part of an application to FAA for an Inspection Authorization. Tr. 124.

Board explained that in intentional falsification cases involving maintenance log entries, the law judge must articulate credibility findings to determine whether a respondent knew the entry was false.³³

2. *Credibility Determinations*

We defer to our law judge's credibility findings unless those findings are arbitrary and capricious.³⁴ In Administrator v. Porco, the Board held the law judge's credibility determinations should be based explicitly on factual findings in the record, in order to establish the determinations are not arbitrary and capricious.³⁵ In the case *sub judice*, we affirm the law judge's credibility determinations because the law judge articulated several bases for his determinations, and the evidence in the record supports them.

Respondent argues the Administrator failed to show respondent "did anything knowingly or intentionally."³⁶ Respondent bases this argument on his testimony he did not know the log entry was false and the lack of testimony by any other witness that respondent admitted knowing the maintenance log entry was false.³⁷ We find these contentions unpersuasive.

First, we note Board jurisprudence permits the Administrator to rely on circumstantial evidence to prove falsification.³⁸ In the case *sub judice*, the evidence supports the law judge's

³³ NTSB Order No. EA-5641 at 8 (2012) (stating it is appropriate to consider a respondent's subjective intent when determining whether the respondent falsified a maintenance record).

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

³⁵ Id. at 22, 28-29.

³⁶ Appeal Br. 5-7.

³⁷ Id.

³⁸ Administrator v. Dillmon, NTSB Order No. EA-5528 at 13 (2010); Administrator v. Aviance Int'l, Inc., NTSB Order No. EA-3805 at 5 (1993); Administrator v. Beirne, NTSB Order No. EA-4035 at 3 (1993); *see also* Olsen v. NTSB, 14 F.3d 471, 475 (9th Cir. 1994); Erickson v. NTSB, 758 F.2d 285, 288 (8th Cir. 1985).

conclusion that respondent knowingly caused the maintenance log to indicate an inspection had occurred, when one had not. Respondent testified that after he corrected the data entry error concerning the fuel pump, the status report for N718JP showed the fuel pump was actually not overdue for maintenance and the SFP was unnecessary.³⁹ Respondent further testified he provided Inspector DiGiovanni with a copy of the corrected status report for N718JP on November 4.⁴⁰ He acknowledged, however, that he never explicitly told the inspectors the SFP was unnecessary and the preflight inspection no longer required, despite the inspector's repeated questions concerning the maintenance log entry, and notwithstanding the fact that respondent claims he discerned the fuel pump was not overdue while the inspectors were still present at his facility.⁴¹ Respondent explained he was overwhelmed and intimidated by the inspectors, hence, his reluctance to mention the SFP and preflight inspection were not actually required.⁴² Respondent contends he assumed the inspection had been performed on November 4 when he asked Mr. Bernard to send him the maintenance log entry.⁴³ Respondent testified he obtained the maintenance log entry, despite his belief the inspection was not required, and provided it to the FAA inspectors to induce them to "move on."⁴⁴

Furthermore, in addition to the circumstantial evidence indicating respondent knowingly caused a false entry to be made, the law judge's credibility findings buttress this conclusion. For example, respondent testified during direct examination that on November 4, he assumed the

³⁹ Tr. 97-99.

⁴⁰ Tr. 100, 116; but see Tr. 148 (Inspector DiGiovanni's testimony that he was not shown a corrected tracking system report for the fuel pump).

⁴¹ Tr. 100-02, 110.

⁴² Tr. 109-10, 114-15.

⁴³ Tr. 107, 111.

⁴⁴ Tr. 108, 110.

required inspection was completed, yet he later testified that on November 4, he could not verify the inspection was completed.⁴⁵ In addition, we find illogical respondent's repeated testimony he "assumed" the inspection was carried out on November 4, despite the fact he also testified he never informed the CSG technicians the SFP required inspection of N718JP, nor did he instruct the technicians to perform the inspection, simply due to an alleged breakdown in communication.⁴⁶ In reviewing the record, we find no evidence the law judge's credibility determinations in evaluating the third prong of the Hart v. McLucas test were arbitrary and capricious.

In the case *sub judice*, the Administrator fulfilled the burden of proving the three prongs of the Hart v. McLucas test. The law judge provided detailed credibility findings to reject respondent's testimony that he did not know the log entry was false. In accordance with Administrator v. Porco, we find no reason to disturb the law judge's credibility determinations, as the record supports them and respondent presented no evidence to establish they were arbitrary and capricious. Therefore, we affirm the law judge's determination that respondent knowingly caused a false entry to be made in N718JP's permanent aircraft records indicating the SFP required preflight inspection had been performed.

B. Motion to Compel and Motion for Sanctions

As noted above, respondent also argues the law judge erred in denying respondent's Motion to Compel and Motion for Sanctions, and that such denial resulted in severe prejudice to respondent's ability present his case. NTSB administrative law judges have significant discretion in conducting hearings and overseeing discovery. In this regard, we typically review our law

⁴⁵ Tr. 104, 106-07, 110.

⁴⁶ Tr. 104, 106-07, 108, 112, 126-27, 136.

judges' procedural rulings under an abuse of discretion standard, after a party can show such a ruling prejudiced him or her.⁴⁷

Respondent's motions are based on his contention the Administrator failed to comply with Federal Rule of Civil Procedure (FRCP) 33(b)(4)⁴⁸ by providing insufficient responses to two interrogatories and related requests for admissions. Respondent contends the interrogatories and requests for admission were relevant to material facts concerning respondent's defense that an SFP was not required for N718JP's November 4 flight from KIWS to KDWH.⁴⁹ Respondent contends the responses simply stating "objection" are insufficient under FRCP 33(b)(4); therefore, the corresponding admissions should be deemed admitted.

We reject this argument. In denying respondent's motions, the law judge correctly noted this proceeding was being conducted in accordance with the expedited procedures normally applicable to emergency cases and that the FRCP apply to Board proceedings "to the extent practicable."⁵⁰ The law judge did not find respondent was prejudiced to the point he was "unable

⁴⁷ See, e.g., Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Bennett, NTSB Order No. EA-5258 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001)); see also Lackey v. FAA, 386 Fed. Appx. 689, 696 (9th Cir. 2010).

⁴⁸ Pursuant to the Pilot's Bill of Rights, Pub. L. No. 112-153, 126 Stat. 1159, § 2(a) (2012), the FRCP are applicable, "to the extent practicable," to appeals the NTSB handles. FRCP 33(b)(4) provides: "*Objections*. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure."

⁴⁹ Tr. 9-10; Appeal Br. 12-17. Respondent cites the Administrator's responses to Interrogatories 5 and 6 as insufficient. Interrogatory 5 asked the Administrator to state with specificity any and all reasons N718JP: (a) required a SFP or (b) was not otherwise legal to operate. The Administrator responded "Objection. Overbroad." Interrogatory 6 asked the Administrator to provide facts for each response to a request for admission that was not an unqualified admission that form the basis of the response, names and contact information for all persons having knowledge of those facts, and the identity of supporting documents. The Administrator responded, "Objection."

⁵⁰ Tr. 11.

to effectively present a case in his own defense” and noted the Administrator provided the disclosures required by FRCP 26.⁵¹ In addition, respondent does not deny he was able to question the FAA inspectors at length concerning the necessity of the SFP and what the inspectors knew about respondent’s belief that the SFP was not actually needed. Respondent raised these inquiries in his Interrogatories 5 and 6 and Request for Admissions. Moreover, we have already determined that whether the SFP was ultimately required for the November 4 flight is not relevant to the issue of respondent’s falsification.⁵² In this regard, any prejudice respondent contends he suffered was de minimis. Overall, the law judge’s denial of respondent’s Motion to Compel and Motion for Sanctions was not an abuse of discretion.⁵³

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent’s appeal is denied;
2. The law judge’s decision is affirmed; and
3. The Administrator’s emergency revocation of respondent’s mechanic certificate with Airframe and Powerplant ratings is affirmed.

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT AND WEENER, Members of the Board, concurred in the above opinion and order.

⁵¹ Id. FRCP 26 requires initial disclosures of all witnesses who may have discoverable information, copies of documents used to support the Administrator’s claims, the identity of any expert witnessed, and other materials. This disclosure provided respondent sufficient information to present his case.

⁵² Supra at pp. 6-7.

⁵³ Respondent also argues the law judge improperly refused to permit him to make a record showing each Request for Admission should be deemed as admitted. Appeal Br. 18. We agree with the law judge that respondent’s motions were sufficient to inform the law judge of the admissions’ substance and to preserve respondent’s claim of error. Initial Decision at 11; Fed. R. Evid. 103.

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

* * * * *

MICHAEL P. HUERTA,	*	
Administrator,	*	
Federal Aviation Administration,	*	
	*	
Complainant,	*	Docket No.: SE-19818
vs.	*	
	*	
MARTIN R. YERBY,	*	
	*	
Respondent.	*	

* * * * *

Courtroom 128
U.S. Bankruptcy Court
Eldon B. Mahon Federal Courthouse
501 West 10th Street
Fort Worth, Texas

Monday,
June 1, 2015

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

BEFORE: PATRICK G. GERAGHTY
Administrative Law Judge

APPEARANCES:

On behalf of the Complainant:

BRENDAN A. KELLY, ESQ.
FAA, Eastern Region
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Jamaica, New York 11434
718-553-3269

On behalf of the Respondent:

CHRISTOPHER K. GILBERT, ESQ.
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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE GERAGHTY: This has been a proceeding before the National Transportation Safety Board on the Appeal of Martin R. Yerby, hereinafter referred to as Respondent, from an Emergency Order of Revocation which seeks to revoke his Mechanic Certificate with Airframe and Powerplant ratings. That Order serves as the Complaint herein and was filed on behalf of the Administrator, Federal Aviation Administration, herein the

1 Mechanic Certificate with his attached ratings and limitations, on
2 the assertion that by reason of the admitted allegations in the
3 Complaint, that the Respondent had acted in regulatory violation
4 of the provisions of Section 43.12(a)(1) of the Federal Aviation
5 Regulation, which states, as pertinent, that "no person may make
6 or cause to be made any fraudulent or intentionally false entry in
7 any record or report required to be made, kept, or used to show
8 compliance with any requirement of that part."

9 Because of the status of the case, the evidence
10 presented began with the presentation of the Respondent's case-in-
11 chief. First to be called was Mr. Feist who is an employee of the
12 Federal Aviation Administration. He was part of the inspection
13 team that went to CSG, the corporate entity, in Georgia to conduct
14 an inspection, apparently on an initiation of a whistleblower
15 complaint that had been made. It has nothing really to do with
16 what transpired and is at issue in this proceeding, but that's the
17 reason that the inspection group arrived at CSG.

18 There was argument made as to whether it was an
19 unannounced inspection. That is not to be interpreted in any way,
20 other than the fact that if you are making an inspection, the way
21 to find out about something is not to announce you're making the
22 inspection and have everybody pre-prepare whatever is to be
23 inspected. If you have a whistleblower complaint, probably the
24 best way is to show up. And it's the same as, in fact, a ramp

1 inspection: A pilot lands somewhere and the FAA happens to be at
2 the airfield and they conduct an unexpected ramp inspection, which
3 is why you should have the required documents in the aircraft.

4 Anyway, Mr. Feist did testify as to what occurred there.
5 They were there essentially to look at the records and to see the
6 program, that is, the maintenance program, being conducted by CSG,
7 because, as I understood the testimony, the initial whistleblower
8 complaint was that there was some discrepancy in the way the
9 program was being performed or conducted.

10 However, while there, it came to their attention that
11 this status board and the computer that was being used by CSG to
12 track times were not in agreement, that it showed on the board
13 that the fuel pump for the particular aircraft was out of time.
14 And the aircraft we're referring to is November-718-Juliet-Papa.

15 As a consequence of determining that it appeared that
16 this fuel pump on this aircraft was out of time limitations and
17 therefore the aircraft was unairworthy as a matter of law,
18 according to the witness, they inquired from Mr. Yerby, who was
19 the Director of Maintenance, as to how CSG would resolve this.
20 And it was Mr. Yerby, according to this witness, who stated that
21 they would resolve it by obtaining a special flight permit, that
22 is, a ferry permit, so that the aircraft could be moved from where
23 it was to the other station so that it could be repaired.

24 Mr. Hank DiGiovanni also testified at the insistence of

1 the Respondent. He is a retired Aviation Safety Inspector;
2 however, he was employed by the FAA at the time and participated
3 in the inspection at CSG. He also testified that the reason that
4 the inspection was being done was because of the whistleblower
5 complaint and that it never was the intention to check specific
6 aircraft, rather to check the maintenance program to see how CSG
7 was conducting the maintenance since they were certified under
8 Part 135, also Part 91, and FAA needed to assure themselves as to
9 how the program on an inspection was being completed. That is,
10 FAA was concerned about the maintenance control, how they did
11 things.

12 And according to Mr. DiGiovanni, the situation at issue
13 here arose because it appeared that the fuel pump was overdue on
14 its time, again referring to both the BART and the status board,
15 and that at that time, Mr. DiGiovanni testifies that they asked
16 Mr. Yerby, the Respondent, how CSG or he, as Director of
17 Maintenance, would handle the problem of the overdue, apparently
18 overdue fuel pump. And the response was that he, the Respondent,
19 would do this by obtaining a special flight permit. So
20 Mr. DiGiovanni and Mr. Feist both were clear in their testimony
21 that it's the Respondent who determined that a special flight
22 permit would be the required document to take care of the apparent
23 discrepancy on the time limitations of the fuel pump.

24 And Mr. DiGiovanni also testified that on November 4 of

1 2014, that neither he, nor Mr. Feist, or any other member
2 apparently of the inspection team had any information that the
3 fuel pump was, in fact, not due for an inspection or had not gone
4 over the time.

5 Specifically, he indicated that he, Mr. DiGiovanni, had
6 never been told by anyone that a ferry permit would not be
7 required, and at no time did anyone, either himself, or anyone
8 else, by the FAA suggest to the Respondent how they should resolve
9 the problem, specifically again stating that it was the Respondent
10 who said he would resolve it by getting a ferry permit; he,
11 according to the testimony, went out of the room, came back, and
12 indicated that he had applied for the ferry permit. And, in fact,
13 the exhibit does show that a ferry permit was applied for and that
14 an inspector, Mr. Ricker, in fact, did issue the special flight
15 permit which was received as Exhibit A-1.

16 And Exhibit A-2, which is signed by the Respondent and
17 dated November 4, 2014, on the second page thereof, which would be
18 the reverse of a one-page document, for the reason given for the
19 application of the ferry permit, that is, a special airworthiness
20 certificate, is that "Engine-driven fuel pump due overhaul." So
21 apparently at the time that the ferry permit was applied for,
22 everyone was under the assumption that the fuel pump was out of
23 time.

24 On cross-examination, Mr. DiGiovanni again reiterated

1 that on November 5, the discussion was that things were not being
2 properly tracked, but that they were never told, either on the 4th
3 of November or the following day, the 5th of November, that the
4 special flight permit was not necessary.

5 Respondent testified on his own behalf. He is the
6 Director of Maintenance for CSG Aviation. He has been involved in
7 maintenance, Part 135 and others. He is the Director of
8 Maintenance on the certificate for CSG, and he obtained his
9 Airframe and Powerplant Ratings in 1994, but had been involved in
10 aviation maintenance prior to that and continuously since, as I
11 understood his testimony.

12 As to the inspection on November 4, the Respondent
13 testified that around 9 o'clock in the morning, the inspection
14 team showed up. They were not expected, and in his overall
15 testimony, he asserts that he felt intimidated by the questioning
16 by the inspectors that were there on the premises, and I would
17 agree that probably having an inspection team show up unannounced,
18 that one could feel slightly put upon.

19 But I reject that an individual who is Director of
20 Maintenance with this amount of time would feel that he was in a
21 position where he could not have made a clarifying statement on
22 something to any of the inspectors, whether about this fuel pump,
23 or if they brought up some other issue, and the Respondent knew
24 what the FAA was saying was incorrect for whatever reason, that he

1 would not find it within himself to say, no, this other record
2 shows that, or we have this tool and it is calibrated. I do not
3 accept that testimony.

4 The Respondent did agree, however, that on November 4,
5 when the issue came up as to the fuel pump, that both the BART and
6 the status board showed that the fuel pump time had been exceeded,
7 and that he did not have sufficient time to check at the time, and
8 therefore, on his testimony, that the FAA was suggesting to him
9 that he should get a special flight permit, so there is the
10 testimony in direct conflict.

11 Now, as to whether or not this aircraft flew or was
12 being flown at the time that the special flight permit had been
13 issued and before it was determined that there was an error in the
14 computer and the status board, and using Exhibit R-3, showing that
15 the fuel pump on the aircraft was the one that's shown on Exhibit
16 R-3 and therefore was not over time, that testimony by the
17 Respondent is contradictory, because on questioning on direct
18 testimony, he states that the aircraft had not departed at the
19 time.

20 But then on cross-examination, when asked why he didn't
21 tell the FAA directly that the ferry permit was not required,
22 since I had Exhibit R-3, which showed the correct fuel pump time,
23 Respondent stated that he wasn't sure whether the aircraft was
24 flying at that time. So there is a contradiction in his testimony

1 there.

2 As to the inspection itself, he testified that, in his
3 words, there was a breakdown in communication, and he continually
4 used in his testimony with respect to the inspection that he
5 assumed that an inspection had been made. And, of course, that
6 goes to the usual cliché as to assumptions. But that was his
7 testimony, that he assumed that that had been made.

8 As to what communication he had with Mr. Bernard, who is
9 the maintenance individual who made the entry on November 5,
10 Respondent testified that he never spoke directly with Mr. Bernard
11 but simply by email. But he testified he did not get any
12 inspection report on November 4, so that he made an email to
13 Mr. Bernard on the following day, the morning of November 5, and
14 Mr. Bernard replied by email, sending back the Exhibit A-3, which
15 shows an inspection for purposes of ferry permit having been
16 completed on November 4.

17 As to communications with Inspector Feist, he stated
18 that he had simply handed the log entry to the inspector, but that
19 he did not make any statement to Mr. Feist at that time that no
20 inspection was required, and that the ferry permit itself had not
21 been required.

22 On redirect examination, the Respondent stated that, in
23 his view, the ferry permit was not required, and the inspection
24 was not required as established by the Exhibits A-2 and R-3. And

1 he indicated that at the time that the aircraft departed, but
2 again, the testimony as to the departure of the aircraft varies.
3 At one time he's not sure whether it departed. Other times, he
4 now says that at the time it departed, I had determined that it
5 was safe for flight by reference to Exhibit R-3, and that he
6 believed at that time, the aircraft was legal to fly without a
7 special flight permit.

8 In the rebuttal case by the Administrator,
9 Mr. DiGiovanni testified again and reiterated that he had never
10 been told by the Respondent or anyone that the special flight
11 permit was not required. As to being the individual, or he or
12 Mr. Feist repeatedly asking the Respondent for copies of the
13 inspection report, Mr. DiGiovanni stated that the only thing he
14 asked was one time, and he asked, "who did the inspection?" And
15 at the end of the day, the statement had been made to him by the
16 Respondent that the inspection had not, in fact, been performed.
17 And Mr. DiGiovanni, as far as the flight of the aircraft, also
18 indicated that he couldn't recall whether or not the flight had
19 been undertaken at the time that anybody became aware of the true
20 nature of the time on the fuel pump.

21 Mr. Feist also testified in the rebuttal case. The only
22 question, according to this witness, was whether the inspection
23 had been done, the statement being the special flight permit had
24 not been entered and that the inspection had not, in fact, been

1 accomplished.

2 As to the burden in this case, it remains at all times
3 with the Complainant, and he must carry it by a preponderance of
4 the reliable and probative evidence. The issue here is
5 intentional falsification, and the three criteria, both in the
6 McLucas case and in Board precedent in these type of cases is that
7 three elements must be shown. It must be shown that there is a
8 false representation, that it's made with knowledge of its
9 falsity, and that it is material.

10 In my view, the answer to the question of whether or not
11 the entry was false, the evidence by a preponderance does show
12 that the entry on November 5 was in fact a false entry, because it
13 shows on the documentation, A-3, that an inspection was performed
14 on November 4, when in fact the inspection, if it was performed by
15 Mr. Bernard, was not done until the following day, November 5.

16 Now, was it made with knowledge on the part of the
17 Respondent? The evidence to me and Respondent's evidence to me is
18 not as credible as the evidence offered by the FAA. I have to
19 take into account the demeanor of the witnesses, the interests or
20 benefit that the witness or witnesses would have in the testimony.
21 Obviously the benefit to the Respondent would be there is no case
22 against him, whereas the FAA is simply individuals that were
23 taking part in an inspection.

24 In the Answer, Paragraph 7, the Respondent admits that

1 he caused Mr. Bernard to make the entry in the aircraft
2 maintenance log, so he admits that he's the one that caused
3 Mr. Bernard to make the entry. And, again, in Paragraph 8, the
4 Respondent admits in his Answer that he caused Mr. Bernard to make
5 the entry in the maintenance log.

6 The issue here is whether or not it was material. At
7 the time -- and the evidence in front of me, it preponderates in
8 favor of the finding that at the time that the ferry permit was
9 applied for and the special airworthiness certificate was applied
10 for, all of the participants in this event were under the
11 impression that the fuel pump was out of time, and that,
12 therefore, if it was going to be repaired -- and it couldn't be
13 repaired at the place where the airplane was located but had to be
14 flown to another place, that that could only be done under the
15 ferry permit.

16 There is a conflict in the testimony as to who suggested
17 the ferry permit. Respondent's testimony is that the FAA
18 dragooned him into getting the special flight permit. However,
19 the FAA's testimony is that it was the Respondent who responded
20 that a ferry permit would be necessary in response to a question
21 by the inspectors, how are you going to handle this? I believe
22 that is the more credible version of the events, and that is the
23 one I accept.

24 As to the performance of the inspection, the Respondent

1 admits that he did not obtain direct knowledge. He only assumed
2 that it was done, and he concedes in his testimony that he did not
3 follow through on the requirements specified in CSG's own
4 Operations Manual, that inspection be accomplished. It was an
5 assumption.

6 As to whether the airplane was already in flight when
7 the determination was made by looking at Exhibit R-3 and
8 determining that this unit was in fact within time, that is not
9 clearly resolved. But the issue is that at the time of the ferry
10 permit and when it was produced, everyone was under the assumption
11 that a ferry permit was going to be required, and once it had to
12 be required, it was also then required that an inspection had to
13 be performed to determine if the aircraft was safe.

14 It is not a subsequent determination that because there
15 was an error in the tracking that the airplane did not exceed time
16 limitations with respect to the fuel pump and therefore it was
17 safe. It was that a ferry permit was required because of the
18 belief at the time that the ferry permit was necessary and
19 therefore an inspection was required to determine that it was safe
20 for flight from A to B.

21 It also indicates to me that the belief on the
22 Respondent's part that the inspection was material, in that he
23 went to the extent to cause Mr. Bernard on the subsequent day to
24 make an entry that an inspection had been performed on the prior

1 day. If there was a determination that none of this was
2 necessary, why go through the event of asking Mr. Bernard to make
3 a false entry? It's not sufficient to me to simply say the FAA
4 was asking where the logbook page was. At that time it could have
5 easily been that there was never a need for any entries. An entry
6 did not have to be made.

7 Whether this was material, it was material at the time
8 that the ferry permit was applied for. It is also material
9 subsequently, because it is now in a record that is required to be
10 kept or to be maintained to show the maintenance history of this
11 aircraft. Therefore, anyone going into the logbook entries,
12 maintenance record for this particular aircraft would be able to
13 rely upon this entry, that on November 4 of 2014, this aircraft
14 had been inspected and determined to be safe for flight for
15 purposes of a flight permit.

16 The FAA subsequently could be influenced. That is all
17 that's required. It's not that it must be shown to have
18 influenced anybody, only that it is capable of influencing at some
19 time in the future. Here the Respondent caused Mr. Bernard
20 admittedly to make an entry on November 5 that was not true. It
21 was a false entry. The Respondent knew that the aircraft had not
22 been inspected on November 4, and yet Mr. Bernard made this entry,
23 and the Respondent produced that entry to the FAA to show that an
24 inspection had been done.

1 In my view, the evidence does show that the Respondent
2 did cause to be made a false entry, which is material, and with
3 knowledge that the entry was, in fact, false.

4 Turning to the Affirmative Defenses in the Answer,
5 clearly the Complaint states a claim on which his action can be
6 based. Affirmative Defenses shift the burden of proof to the
7 individual claiming the Affirmative Defense. With respect to
8 those Affirmative Defenses, I do not find that that burden has
9 been carried by the Respondent to show that the inspectors knew at
10 the time that the logbook page was presented to them that the
11 inspection was not necessary.

12 As to laches or estoppel, the precedent from the Board
13 is that it must be shown specific prejudice. That has not been
14 obtained here, and therefore, I reject those Affirmative Defenses.
15 And the evidence is not sufficient to carry by a preponderance of
16 the evidence that the Administrator's claims should be barred
17 either by duress or bad faith, and therefore, I do not find those
18 affirmative defenses have been established.

19 Rather, on the preponderance of the reliable and
20 probative evidence in front of me, I do find that the Respondent
21 did, in fact, cause Mr. Bernard to make a false material entry in
22 the aircraft maintenance logs by indicating that an inspection had
23 been performed as required by a special flight permit, when, in
24 fact, it had not been performed on that date, and that entry is in

1 fact material, and that the Respondent knew that the entry was in
2 fact false or incorrect.

3 I, therefore, conclude that the Respondent did in fact
4 act in regulatory violation of Section 43.12(a)(1), in that he
5 caused Mr. Bernard to make an intentionally false entry in a
6 record required to be kept or maintained.

7 With respect to the sanction, the Board is aware of the
8 sanction guidance table, and in fact, Board precedent is clear in
9 cases of intentional falsification that revocation is the
10 appropriate sanction, even for one instance of intentional
11 falsification, and I simply cite Administrator vs. Farrington,
12 Board Opinion and Order EA-4171, a 1994 case, and also
13 Administrator vs. Martinez, Opinion and Order EA-5409, a 2008
14 case.

15 In this instance, it has been shown that the Respondent
16 caused to be made a knowingly intentionally false material entry,
17 and therefore, with that violation, under Board precedent, it is
18 appropriate to impose a sanction of revocation. I, therefore,
19 find and conclude that the Respondent did cause to be made an
20 intentionally false entry in violation of the requirements of Part
21 43 of the Federal Aviation Regulations, and therefore, I will
22 affirm the Administrator's Complaint as issued.

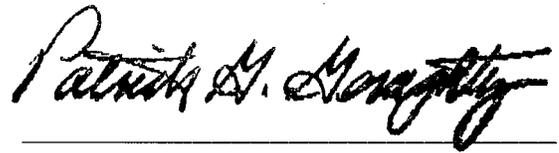
23 ORDER

24 IT IS THEREFORE HELD THAT:

1 (1) That the Emergency Order of Revocation, the
2 Complaint herein, be, and hereby is, affirmed as issued.

3 (2) That the Respondent's Mechanic Certificate Number
4 3012356 with attached Airframe and Powerplant Ratings be, and
5 hereby are, revoked on an emergency basis.

6 Entered this first day of June 2015, at Fort Worth,
7 Texas.

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9

10 EDITED ON

Patrick G. Geraghty

11 June 8, 2015

Administrative Law Judge

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APPEAL

ADMINISTRATIVE LAW JUDGE GERAGHTY: Mr. Kelly, would you come up here, please. The record will reflect that I am handing to Mr. Kelly printed copies of the appeal provisions in emergency proceedings, and I'm asking that you retain one and give one copy to Mr. Gilbert, if you would, please.

MR. KELLY: (Handing document.)

ADMINISTRATIVE LAW JUDGE GERAGHTY: And the record will reflect that Mr. Kelly has complied with my request, and that both counsel have copies of the appeal provisions.

Anything further for the record at this point?

(No response.)

ADMINISTRATIVE LAW JUDGE GERAGHTY: Nothing further. Proceeding is closed.

(Whereupon, at 3:45 p.m., the hearing in the above-entitled matter was concluded.)

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Martin R. Yerby

DOCKET NUMBER: SE-19818

PLACE: Fort Worth, Texas

DATE: June 1, 2015

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.



Barbara Wall
Official Reporter