

SERVED : July 30, 1992

NTSB Order No. EA-3630

**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 10th day of July , 1992

THOMAS C. RICHARDS,
Administrator,
Federal Aviation Administration,

Complainant,

Docket SE-9806

v.

ROBERT W. AGANS, SR.,

Respondent.

OPINION AND ORDER

Respondent has appealed from an initial decision of Administrative Law Judge Joyce Capps, issued orally at the conclusion of an evidentiary hearing held on August 1, 1989.¹ By that decision, the law judge affirmed an order of the Administrator suspending respondent's airman certificate for 15 days for an alleged violation of section 91.9 of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91), stemming from a

¹An excerpt from the transcript containing the initial decision is attached.

September 6, 1987 incident in which respondent struck another airplane while operating his aircraft on a taxiway.²

In the order of suspension (which served as the complaint), the Administrator alleged the following:

- "1. You are the holder of Airman Certificate No. 053321641 with Private Pilot Privileges.
- 2| On September 6, 1987, you acted as pilot in command of civil aircraft N73TS, a Piper PA28 owned by another, which was involved in an accident while taxiing at Portland, Maine.
- 3| At approximately 1430 local time, your wingtip struck the nose of a parked Beechcraft Baron, civil registration N287D, while taxiing for departure.
- 4| As a result of said collision, civil aircraft N287D sustained substantial damage and minor damage was incurred by your airplane."³

Respondent does not dispute the first three allegations of the complaint. As to the fourth allegation, the evidence reveals that the accident rendered the Beechcraft unairworthy and resulted in repairs costing approximately \$4,000. Damage to respondent's aircraft was essentially limited to paint scratches.

In his brief, respondent, who is acting pro. se. does not deny his culpability for the accident. Instead, the main thrust of his appeal is that the sanction ordered by the Administrator is unwarranted. In this regard, he suggests that he has already

²FAR § 91.9, which has since been amended and remodified as § 91.13(a), provided as follows:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The Piper aircraft which was operated by respondent is owned by a business in which he and his wife are the principals. See Tr. 32-33.

seined his "punishment" in terms of time and money spent in responding to the Administrator's action and that, as he now recognizes the mistake he made in the operation of his aircraft, a suspension of his airman certificate would do nothing further to advance the cause of air safety or the public interest.⁴

The Administrator has submitted a reply brief, in which he urges the Board to affirm the initial decision.

Upon consideration of the briefs of the parties and the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order in its entirety. We adopt the law judge's findings as our own.

While respondent has suggested that a suspension of his airman certificate is unwarranted because he has already "learned his lesson," we must point out that we have previously held that this does not constitute a valid basis for reducing an otherwise reasonable suspension.⁵ Similarly, the Board has in the past

⁴Respondent also maintains in connection with his appeal that the law judge erroneously refused to hear evidence offered in support of his defense to the Administrator's charges. However, he has not specified what evidence was excluded at the hearing or explained how his defense was prejudiced thereby. Moreover, we have independently reviewed the hearing transcript and found no basis for respondent's claim. Accordingly, we deem this contention to be groundless.

⁵See Administrator v. Crapps 2 NTSB 437, 438 (1973), where the Board indicated that, in addition to assessing the impact of a suspension upon the affected airman, consideration must be given to the fact that the imposition of a sanction involves the element of "detering other pilots from [committing] similar violations in the future." See also Administrator v. Peat, 3 NTSB 57, 62 (1977), reconsid. denied, 3 NTSB 71 (1977); Administrator v. Bell, 5 NTSB 501, 502 (1985).

rejected the argument that the costs incurred by an airman in defending a certificate action may be considered in mitigation of a sanction assessed by the Administrator for an FAR violation.⁶ The 15-day suspension which was ordered in this case is at the lower end of the range of sanctions imposed for FAR section 91.9 violations of a similar nature. Thus, we do not believe that the suspension ordered by the Administrator and sustained by the law judge was unreasonable, and we find no error in the law judge's affirmance of the Administrator's order.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 15-day suspension of respondent's airman certificate shall begin 30 days from the date of service of this order.⁷

COUGHLIN, Acting Chairman, LAUBER, KOISTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁶See Administrator v. Robinson, 2 NTSB 1051, 1053 n.10 (1974). See also Administrator v. Smith, NTSB Order EA-3319 at 7 (1991) and Administrator v. Hoskins, NTSB Order EA-3422 at 6 (1991), in which the Board opined that the adverse economic consequences of a sanction do not serve as a valid basis for its reduction.

⁷For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the . . . FAA pursuant to FAR § 61.19(f).