

SERVED: April 20, 1993

NTSB Order No. EA-3854

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 6th day of April, 1993

JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11495
v.)	
)	
LESLIE E. THOMPSON,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from an initial decision of Administrative Law Judge Patrick G. Geraghty, issued orally at the conclusion of an evidentiary hearing held on April 11, 1991.¹

By that decision, the law judge affirmed the Administrator's determination that respondent had violated section 61.37(a)(5) of

¹A copy of the decisional order, together with the comments that are incorporated in it by reference, both excerpted from the transcript, is attached.

the Federal Aviation Regulations ("FAR," 14 C.F.R.) by using unauthorized material during a pilot's written instrument rating examination that was conducted on February 12, 1990.² In addition, the law judge sustained the revocation of respondent's private pilot certificate, which had been ordered by the Administrator as a sanction for that alleged FAR violation.

In connection with his appeal, respondent concedes that he brought "a small cheat sheet with some answers on it"³ to the examination room, but maintains that he did not violate FAR section 61.37(a)(5) because he did not "use" it before his examination was confiscated by an FAA test examiner.⁴ Respondent also contends that the revocation of his airman certificate is too harsh a sanction for the FAR violation alleged in this case.

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

²FAR § 61.37(a)(5) provides as follows:

"§ 61.37 Written tests: Cheating or other unauthorized conduct.

(a) Except as authorized by the Administrator, no person may--

* * * * *

(5) Use any material or aid during the period that [a written pilot certification] test is being given."

³Respondent's Br. 1. The "cheat sheet" referred to appears in the record as Ex. C-4. It is a two-sided handwritten document measuring approximately four and one-half inches by one and one-half inches, which contains numbers corresponding to questions found in the FAA examination question book and another set of numbers indicating the correct multiple choice answer for each such question. See Tr. 13-14.

⁴The examination was confiscated after respondent had answered only two of 60 questions. See Tr. 24-25; Exs. C-1, C-3.

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 and the initial decision. We will therefore deny respondent's appeal.

As has been noted above, respondent readily admits that he brought a "cheat sheet" into the examination room. He has also acknowledged that he placed the "cheat sheet" on one of his legs after the examination began and that he intended to use it as an aid in answering the examination questions.⁵ Although he has related that he was unable to read the "cheat sheet" from that position and did not obtain any answers from it before the test examiner confiscated his examination,⁶ respondent clearly attempted to answer questions by referring to the "cheat sheet" while the examination was in progress. The Board, therefore, believes that respondent's contention that he did not "use" an unauthorized test aid is without merit.

In this regard, we note that the facts of this case are analogous to those of Administrator v. Slattery, 3 NTSB 1935 (1979), in which we rejected a similar argument in finding a violation of section 61.37(a)(5). In Slattery, the respondent, under the pretext of needing to get change to purchase a candy bar, left the examination room and went to his car to retrieve an

⁵Tr. 24-25.

⁶Id. 21.

examination course book, which he referred to prior to returning to the room. This was detected by FAA monitors, who did not permit the respondent to continue taking the examination. While, as a consequence, he did not in fact utilize the information he obtained from the course book to answer any examination questions, the Board nevertheless held that the respondent had "used" an unauthorized test aid in contravention of section 61.37(a)(5). We see no significant distinction between the operative facts in Slattery and those presented in this case.⁷

In view of the above, the Board finds no error in the law judge's affirmation of the Administrator's determination that respondent violated FAR section 61.37(a)(5).

Turning to the matter of sanction, we note that we have previously held that "the integrity of the written examination process is a fundamental part of the system which ensures that only qualified applicants are granted ratings and certificates,"⁸ and that an individual who compromises the integrity of that process by violating FAR section 61.37(a)(5) "has demonstrated

⁷The fact that respondent in the case now before us may have failed to obtain any answers from his "cheat sheet" for want of sharper vision or for having placed it in a poor location for viewing does not negate a finding that he "used" an unauthorized test aid. The purpose of the regulation in question is to prevent cheating, and we do not believe that there is a need to show that an attempt to cheat was successful in order for a violation of that regulation to be found. Thus, when respondent took the "cheat sheet" out and looked at it, he had "used" it within the meaning of FAR § 61.37(a)(5), even though he was unable to apply the information appearing on it to any of his answers.

⁸Administrator v. Slattery, supra, 3 NTSB at 1938.

that he lacks qualifications in the form of the degree of care, judgment, and responsibility required of the holder of an airman certificate."⁹ Consequently, we believe that the Administrator was justified in ordering the revocation of respondent's airman certificate and that the law judge did not err in sustaining that sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order and the initial decision are both affirmed; and
3. The revocation of respondent's private pilot certificate shall commence 30 days after the service of this opinion and order.¹⁰

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

⁹Id. See also Administrator v. Mignano, NTSB Order EA-3435 at 5 (1991). Cf. Administrator v. Gilley, NTSB Order EA-3303 at 4 (1991) and Administrator v. Jordan, EA-3530 at 5 (1992), both of which involved violations of FAR § 65.18(a)(5), which prohibits cheating on written examinations for non-pilot ratings and certifications in the same way that § 61.37(a)(5) proscribes such activity on pilot rating and certification examinations.

¹⁰For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).