

SERVED: December 14, 1993

NTSB Order No. EA-4045

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 14th day of December, 1993

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13322
v.)	
)	
RAYMOND FRANCIS GRZYBOWSKI,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this proceeding on November 3, 1993, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an emergency order of the Administrator revoking respondent's

¹An excerpt from the hearing transcript containing the initial decision is attached. The Administrator has filed a reply brief opposing the appeal.

airman certificate for his alleged violation of section 91.13(a) of the Federal Aviation Regulations, "FAR," 14 CFR Part 91.² For the reasons discussed below, the appeal will be denied, to the extent it seeks a reversal of the violation finding, and granted, to the extent it argues that a lesser sanction should be imposed for any violation sustained.

The October 1, 1993 Emergency Order of Revocation, which served as the complaint in this proceeding, alleges the following facts and circumstances concerning the respondent:

1. You are the holder of Commercial Pilot Certificate Number 137409068.
2. On or about September 26, 1993, you acted as pilot-in-command of a Piper PA 24-260 aircraft, identification number N8992F (hereinafter referred to as the aircraft), on an intended flight out of Niagara Falls International Airport, NY, with one passenger aboard, one Anne K. Bittinger, who was not a pilot.
3. At the beginning of the above-mentioned flight, you started the engine but could not move the aircraft because the chocks had been left under the nosewheel.
4. You then directed Ms. Bittinger to leave the aircraft and pull the chocks from under the nosewheel.

²FAR section 91.13(a) provides as follows:

"§91.13 Careless or reckless operation.

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

5. In attempting to pull the chocks from under the nosewheel while the engine was still running, Ms. Bittinger was struck by a propeller of the aircraft, as a result of which she was injured fatally.

6. By virtue of the above, you operated an aircraft in a careless or reckless manner so as to endanger the life or property of another.

Although the evidence at the hearing would support a finding either that respondent asked his wife, Ms. Bittinger, to remove the chocks, once he realized that they had been inadvertently left in place, or that she volunteered to do so, on learning of that circumstance, the Administrator takes the position that in either event it was extremely careless for respondent to allow his wife to undertake such a task with the engine running.³ We find ourselves, like the law judge, persuaded that respondent violated section 91.13(a) because he did not shut down the engine.

The appropriate inquiry in this matter is, simply, whether respondent's conduct in not turning off the aircraft's engine when his wife left the cabin to remove the chocks was consistent with his responsibility to operate his aircraft as a reasonable and prudent pilot. Our review of the record convinces us that while there is no rule or regulation prohibiting chock removal with an engine on, and even though the Administrator does not in terms argue that chock removal *cannot* be accomplished safely

³The Administrator does not argue that respondent's failure to remove the chocks during preflight was itself careless, and we therefore do not address that issue.

without shutting down the engine on this or any other aircraft, there is sufficient evidence in the record, in the form of opinion testimony by FAA inspectors,⁴ to support the Administrator's position that it is careless or reckless, within the meaning of FAR section 91.13(a), for a pilot to unnecessarily expose anyone to the extreme hazard a spinning propeller represents.

Our judgment in this connection is not altered by the showing that respondent's wife appeared to appreciate the danger involved in her undertaking, for her awareness of the risk does not affect the propriety of the respondent's having, for no good reason, subjected her to it. A prudent pilot, we are persuaded, does not permit others to be imperiled by hazards associated with aircraft operation that can be avoided, especially hazards such as this one that could have been easily eliminated altogether by an engine shutdown.

We do not agree with the respondent that the Administrator's position in this matter must be rejected because there are aircraft that, lacking an electric starter, must be hand-cranked, with chocks in place, in order to be operated at all.⁵ That

⁴We find no reversible error in the law judge's admission of the opinion of a nonpilot airworthiness inspector on the safety of respondent's putative conduct, since his opinion related more to the issue of operational judgment than it did to technical competence.

⁵In fact, the FAA has, in its Flight Training Handbook, FAA Advisory Circular 61-21A, published guidance for the safe removal of chocks after an engine start on such aircraft. The record does not address whether any of the aircraft requiring hand propping have tricycle landing gear, or whether they are

there is an approved procedure for minimizing the risks attendant on starting such aircraft does not establish that it is safe, or acceptable, to use that procedure on an aircraft whose design does not contemplate that such a risk will normally be encountered. Stated another way, we think a pilot's duty of care may fairly be linked to the level of safety the equipment he is operating affords him, and that duty is not lowered because other, less-advanced equipment may not provide the same safeguards.

Notwithstanding our agreement that respondent was careless under a regulation that seeks to prevent unsafe practices, we do not concur in the Administrator's view that respondent's bad safety judgment in this incident reveals him to be without qualification to hold an airman certificate. Rather, we think that the respondent's failure to foresee the unnecessary endangerment he created by not turning off his aircraft's engine would be adequately remedied by a 60-day suspension of his commercial pilot certificate.

(..continued)
predominantly "taildraggers" with no nosewheel just aft of the propeller.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied in part and granted in part, and

2. The Administrator's emergency order of revocation and the initial decision are modified so as to provide for a 60-day suspension of respondent's airman certificate.

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