

SERVED: August 22, 1994

NTSB Order No. EA-4236

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 17th day of August, 1994

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Dockets SE-13696 and
)	SE-13428
RICHARD A. FEKETE,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent, pro se, has appealed¹ from the oral initial

¹Although the Administrator has filed a reply brief opposing respondent's appeal, he argues, in a simultaneously filed motion, that we should dismiss respondent's appeal because he did not perfect it with an appeal brief filed within 5 days after the notice of appeal was served, as required by Section 821.57(b) of our Rules of Practice, 49 CFR Part 821. Moreover, he maintains that the respondent's notice of appeal itself should not be treated as an appeal brief, as the respondent orally requested that we do after the deadline for the brief had passed, because it does not meet the requirements for such a pleading.

We agree with counsel for the Administrator that the adequacy of respondent's notice of appeal as an appeal brief is

decision rendered by Administrative Law Judge William E. Fowler, Jr., in these consolidated proceedings on July 12, 1994, at the conclusion of an evidentiary hearing.² By that decision, the law judge affirmed the emergency revocation of respondent's commercial pilot certificate (No. 2055592) on allegations by the Administrator, in two separate orders, that his disregard of right-of-way rules for landing had created collision hazards for aircraft in the vicinity of the Millville, New Jersey airport on four different dates.³ The law judge agreed with the

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questionable, as it does not present any objections to any of the law judge's findings and conclusions with respect to the merits of the charges he upheld. See Administrator v. Walker, NTSB Order No. EA-3348, at p. 2 (1991) ("[A]n appeal brief is required to be more than a general statement of the issues a party wants to have reviewed by the Board or a listing of grounds on which an argument that the law judge erred could be developed... It must, rather, identify specific challenges to the law judge's findings, conclusions, or rulings and supply the reasons why the party believes the law judge found, concluded, or ruled incorrectly...."). However, the one-page notice does set forth various factors, sufficiently explained to be susceptible to reasoned rebuttal, that the respondent appears to believe are, or should be, extenuating, if not exonerating. We will, therefore, deny the motion to dismiss, to which respondent filed no written response, and treat respondent's notice of appeal as an appeal brief.

At the same time, we do not think the Administrator can fairly be faulted for not immediately recognizing that the document respondent filed within the time limit for a notice of appeal was intended to be, or might be later construed to constitute, both his notice and his brief, so as to require the filing of a reply brief within 10 days. Nevertheless, assuming that the Administrator should have filed a responsive pleading within 10 days after the combination document was submitted, his motion to file the reply brief two days out of time is granted, as respondent will not be prejudiced by our acceptance of the filing.

²An excerpt from the hearing transcript containing the initial decision is attached.

³By Order of Suspension dated December 2, 1993, the

Administrator that respondent had violated sections 91.113(g), 91.111(a), and 91.13(a) of the Federal Aviation Regulations ("FAR," 14 CFR Part 91) and that the violations demonstrated that the respondent lacks the care, judgment, and responsibility required of a certificate holder.⁴ We deny the appeal.

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Administrator sought to suspend respondent's certificate for 90 days for his alleged failure to yield the right-of-way to other aircraft during landings at Millville on April 14 and 29, 1993. On June 22, 1994, in an Emergency Order of Revocation, the Administrator made similar allegations concerning respondent's operation of an aircraft at Millville on May 3 and 9, 1994. The revocation sought in the latter order is predicated on the incidents described in both orders and, therefore, subsumes the suspension sought in the first order.

⁴FAR sections 91.113(g), 91.111(a), and 91.13(a) provide as follows:

§ 91.111 Operating near other aircraft.

(a) No person may operate an aircraft so close to another aircraft so as to create a collision hazard.

§ 91.113 Right-of-way rules: Except water operations.

* * * * *

(g) *Landing.* Aircraft, while on final approach to land or while landing, have the right-of-way over other aircraft in flight or operating on the surface, except that they shall not take advantage of this rule to force an aircraft off the runway surface which has already landed and is attempting to make way for an aircraft on final approach. When two or more aircraft are approaching an airport for the purpose of landing, the aircraft at the lower altitude has the right-of-way, but it shall not take advantage of this rule to cut in front of another which is on final approach to land or to overtake that aircraft.

§ 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.

The orders of the Administrator that served as the complaints in these matters contain the following allegations:

From the December 2, 1993 Order of Suspension--

2. On or about April 14, 1993, you acted as the pilot-in-command of a Cessna 150 aircraft, identification no. N1697Q, in the vicinity of Millville, New Jersey Airport Traffic Pattern.

3. During the flight operation described in paragraph 2 above, you failed to give way to an aircraft that had the right of way by virtue of the fact that it was on final approach and at a lower altitude than your aircraft.

4. On or about April 29, 1993, you again acted as the pilot-in-command of the same aircraft described in paragraph 2 above, a Cessna 150, identification no. N1697Q, in the vicinity of Millville, New Jersey Airport Traffic Pattern.

5. During the flight operation described in paragraph 4 above, you failed to give way to at least two aircraft that had the right of way by virtue of their altitude and position in the traffic pattern. Specifically:

a. You turned inside of a Piper Arrow, identification no. N2841V, when that aircraft was on final approach to the [airport].

b. You turned inside of a helicopter, identification no. N506TH, when that aircraft was at a lower altitude and ahead of you in the pattern.

6. Upon landing your aircraft during the flight operation described in paragraph 4 above, you came dangerously close to a Piper aircraft that had just landed and was clearing the runway; you also came dangerously close to a Beech Baron aircraft, identification no. N1849R, that was in position on runway 10, awaiting takeoff.

From the June 22, 1994 Emergency Order of Revocation--

2. On or about May 3, 1994, you acted as pilot in command of a Cessna 150 aircraft, identification number N18625, operating in the vicinity of Millville Airport, Millville, NJ ("MIV").

3. While you were flying the base leg for a visual approach to and landing on Runway 10 at MIV, a Robinson R-22 helicopter ("R-22") making practice instrument approaches was on final approach to the same runway.

4. At the time you turned your aircraft onto final approach for Runway 10, you were in front of and at an altitude approximately 100 feet above the R-22.

5. You were aware that the R-22 was making a final approach to Runway 10 at the time you turned your aircraft onto final approach to Runway 10, and that your turn would place your aircraft in the path of the R-22's approach to Runway 10.

6. The R-22 passed under your aircraft and, upon reaching the threshold of Runway 10, changed course to the right of the runway to get clear of your landing aircraft.

7. Your turn from base leg to final approach in the path of the R-22 created a collision hazard endangering the lives and property of others.

8. On or about May 9, 1994, you again acted as pilot in command of N18625, operating in the vicinity of MIV.

9. While you were flying the downwind leg for a visual approach and landing on Runway 28 at MIV on or about May 9, 1994, a Cessna Citation jet aircraft, identification number N40FJ, announced on the frequency that it was turning onto final approach for Runway 28.

10. While you were flying the base leg for Runway 28, you confirmed specifically with the Citation jet via radio that it was on final approach to Runway 28 and then turned your aircraft onto final approach to Runway 28.

11. At the time you turned your aircraft onto final approach for Runway 28, you were in front of and at an altitude higher than that of the Citation jet.

12. You were aware at the time you turned your aircraft onto final approach to Runway 28 that your turn would place your aircraft in the path of the Citation jet's approach to Runway 28.

13. The Citation jet abandoned its approach and performed a "go-around" to avoid colliding with your aircraft.

14. Your turn from base leg to final approach in the path of the Citation jet created a collision hazard endangering the lives and property of others.

The law judge, on consideration of the evidence the parties submitted with respect to these allegations, concluded that the Administrator had proved all of the charged violations and that, as alleged, respondent's conduct reflected "a chronic pattern of gross disregard for the Federal Aviation Regulations governing rights-of-way at uncontrolled airports and gross disregard for the foreseeable consequences [of his] unsafe actions" (Initial Decision at Tr. p. 262).

On appeal, respondent, without directly challenging any of the law judge's findings or conclusions, see note 1, supra, raises several circumstances he appears to believe argue against affirmation of the Administrator's orders. Specifically, he suggests that his conduct resulted from his confusion--for which the FAA is assertedly responsible by virtue of allegedly inconsistent regulations and advice--over the legality of straight-in approaches at uncontrolled fields such as Millville.

In this connection he implies that he believed that if straight-in approaches were not permitted, then aircraft landing in accordance with the airport's traffic pattern need not yield to aircraft that had not.⁵ He in effect submits that he now

⁵Respondent owns and operates Black's Flying Service, a fixed-base operation at Laytons Airport, Monroeville, New Jersey, where he is a flight instructor with, according to his estimate, more than 21,000 hours of flying time. Given his extensive experience in aviation, including more than 20 years as an instructor, the claim that he did not know what regulations

understands, based in part on discussions with FAA personnel after the hearing, that straight-in approaches are permissible at uncontrolled fields and, accordingly, he will change his operating procedures by yielding the right-of-way, when the rules so dictate, to aircraft that have not flown the pattern. We find in respondent's comments neither justification for excusing the conduct on which the charges upheld by the law judge were based nor reason for reducing the sanction he affirmed.

We think it irrelevant that respondent may have entertained some uncertainty, for whatever reason, as to the appropriateness of straight-in approaches at an uncontrolled field, or whether the nature, mix, and volume of aircraft operations at Millville have developed to the point where the provision of air traffic control services may be necessary to ensure air safety there.⁶ The right-of-way rules for landing at an airport prescribe priorities for landing based on the relative positions of aircraft as they approach an airport. They cannot be ignored whenever another aircraft is executing a straight-in approach. More to the point, the right-of-way rules do not purport to

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applied to operations at an uncontrolled field such as Millville is unpersuasive at best. We note, in this connection, that the Citation the respondent cut in front of, in violation of the right-of-way rules, had flown the pattern.

⁶Respondent's professed concern over the safety of operations at Millville is difficult to reconcile with the unsafe condition his operations there have repeatedly created for himself and for other users. Indeed, on the record before us it appears that respondent has had no qualms about compromising the safety of other aircraft that approached to land at Millville in a manner that he did not think was acceptable.

supplant a pilot's independent duty to avoid flying dangerously close to other aircraft, whether landing or not. Thus, any confusion respondent may have harbored about the validity of straight-in approaches at an uncontrolled airport neither excuses nor explains his unsafe method of taking precedence over others he knew were landing at Millville.

We also think it of no consequence that respondent may now be prepared to follow right-of-way rules he has previously chosen to ignore, at least for some operations at Millville. The seriousness of respondent's conduct lies not so much in his failure to adhere to those rules in certain circumstances, but, rather, in the fact that those failures were accompanied by his creation of collision hazards with respect to the aircraft to which he should have yielded. Irrespective of whether such conduct was predicated on some perverse view that aircraft not flying the pattern before landing might do so in the future, to the benefit of air safety, if those flying the pattern refused to yield the right-of-way to them, we agree with the Administrator and the law judge that respondent's violations warrant revocation. An airman who intentionally operates his aircraft in a way that places the lives and property of others at risk does not possess the nontechnical qualification required of a certificate holder.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and
2. The initial decision affirming the revocation of respondent's commercial pilot certificate is affirmed.

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