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NTSB Order No. EA-4338

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 21st day of March, 1995

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. RONALD PISAREK, Respondent.	Docket SE-13566

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge William E. Fowler, Jr., at the conclusion of an evidentiary hearing held in this case on July 27, 1994.[1] In that decision, the law judge found that respondent had violated 14 C.F.R. 91.13(a), but not section 91.175(d),[2] in

[1] Attached is an excerpt from the hearing transcript containing the oral initial decision.

[2] **§ 91.13 Careless or reckless operation.**

connection with respondent's landing of a Piper PA 23-250 with a passenger on board when the reported ground visibility was 1/16th of a mile in fog with a ceiling of zero. He modified the sanction from a 180-day suspension of respondent's commercial pilot certificate to a 90-day suspension.[3] For the reasons discussed below, respondent's appeal is denied and the initial decision is affirmed.

On December 16, 1992, at approximately 8:30 p.m., respondent landed on Runway 23 at Westmoreland County Airport in Latrobe, Pennsylvania when the reported ceiling was indefinite zero obscured, and the ground visibility was 1/16th of a mile in fog. No other aircraft landed at the airport that night. Despite the poor **ground** visibility, respondent testified that he had the airport in sight at 1,500 feet MSL,[4] and thus had sufficient **flight** visibility to meet the minimum visibility requirements of

(..continued)

> (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.
>
> **§ 91.175 Takeoff and landing under IFR.**
> * * *
> (d) Landing. No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.
> * * *

[3] The Administrator has not appealed from the dismissal of the section 91.175(d) charge or the reduction in sanction.

[4] Mean Sea Level.

the applicable standard instrument approach procedure.[5] However, for reasons respondent could not clearly explain, he touched down 45 feet to the left of the runway centerline.[6] His left landing gear came down on the snow-covered grass outside the 100-foot wide paved runway surface. As a result, the plane was dragged even farther to the left and came to rest off the paved runway. The aircraft, owned by respondent's corporate client, sustained damage to its landing gear and propellers.

Respondent conceded that he was aware of the extremely poor weather conditions on the ground before he commenced his approach, and that air traffic control had provided him with two alternate airports where VFR[7] conditions prevailed. He also knew there was snow on the ground. He argued, however, that because he had the requisite flight visibility at or before the specified decision height (1,389 feet MSL), his decision to land was proper.

Although the Administrator's witnesses questioned how

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[5] The standard approach plate requires 3/4 mile visibility at the specified decision height (1,389 feet MSL). (Exhibit R-1.) It was agreed that if respondent indeed had the airport lights in sight at 1,500 feet MSL, he met the flight visibility requirements of the approach plate and, accordingly, of section 91.175(d).

[6] Respondent acknowledged that, despite the lack of any wind that night, he "apparently was drifting" to the left before he touched down. Although he hypothesized about potential causes of this drift -- "[m]aybe my passenger had his foot on the rudder, or some other input, maybe one engine had slowed a little" (Tr. 176) -- he could not explain why, if he had the visibility he claimed, he did not correct it before touching down.

[7] Visual Flight Rules.

respondent could have had sufficient flight visibility to see the airport lights at 1,500 feet MSL when the ground visibility was almost nonexistent, the law judge credited respondent's testimony in this regard. Accordingly, he dismissed the alleged violation of section 91.175(d).[8] However, he found that respondent's decision to land at Latrobe with a passenger on board when he knew the ground visibility was "terrible," and alternate airports were available, was careless and in violation of section 91.13(a). We agree.

Respondent's primary contention at the hearing, and on appeal, is that he went off the runway only because of inadequate snow removal by the airport, and not because of any carelessness on his part. Citing FAA Advisory Circular 150 (which was not made a part of the record in this case), respondent asserts that runway edge lights are supposed to define the usable runway area, and that snow must therefore be removed from the entire area inside the runway edge lights. Thus, even though the runway edge lights here at issue are located more than ten feet away from the paved runway surface, respondent claims the grass between the pavement and the lights should have been treated as usable runway

[8] We agree with respondent that the law judge's dismissal of this charge cannot be squared with his "finding" (actually part of his recital of the allegations in the Administrator's complaint) that respondent landed when weather conditions were below the prescribed minimums listed in the instrument approach procedure. (Tr. 216.) However, we think it is clear from the law judge's other findings, and the initial decision as a whole, that the law judge found the weather conditions in flight were **not** below prescribed minimums, and he merely misspoke.

and plowed free of snow.

Respondent admitted that he had made as many as 100 landings at this airport, many of them at night and many with snow on the ground. He also admitted he knew there was snow on the ground at the time of the subject landing. Airport officials testified that at this airport snow is removed only from the paved runway surface, and not all the way out to the runway edge lights located in the outlying grass. Accordingly, the record supports a finding that, in light of his experience at this airport, respondent knew or should have known that: 1) the runway edge lights were located some ten feet away from the paved runway surface; and 2) the snow would not have been cleared from the ground area between the edge of the paved runway and those runway lights. Therefore, regardless of whether or not the airport was in compliance with applicable snow removal requirements (an issue we need not reach), respondent was careless in allowing his aircraft to land so far off-center that his left gear landed outside the paved runway surface.

We disagree with respondent's assertion that, because his approach and landing did not violate section 91.175(d), any 91.13(a) violation must be based on events after touchdown. Both alleged violations were based on the same factual premise: that respondent landed this passenger-carrying flight when he knew that on the ground there was zero vertical visibility and only 1/16th of a mile forward visibility. The law judge's conclusion that respondent had the flight visibility required by section

91.175(d) does not bar a finding that he was nonetheless careless in landing under those ground conditions.[9]

Nor does the record support respondent's claim that the poor ground visibility was not a factor in his failure to successfully complete the landing. We think the record as a whole supports the conclusion that respondent landed substantially off center -- causing him to touch down on snow rather than pavement -- because he had inadequate visibility to properly identify the runway. Indeed, his admitted use of the left edge lights (rather than the more commonly used painted center line) to align the aircraft, indicates that he was hindered by the poor visibility.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

2. The initial decision is affirmed; and

3. The 90-day suspension of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.[10]

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

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[9] Respondent's appeal can also be read to suggest that he cannot fairly be found in violation of section 91.13(a), because that charge was merely residual to the section 91.175(d) charge on which he was exonerated. However, it is well-established that conduct can violate section 91.13(a) even if it does not violate another regulation. Administrator v. Murphy, NTSB Order No. EA-3935 at 7 (1993). As in Murphy, we think the complaint in this case provided respondent with adequate notice that section 91.13(a) was charged as an independent violation.

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