

SERVED: June 10, 2005

NTSB Order No. EA-5163

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 9th day of June, 2005

_____	)	
MARION C. BLAKEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-16843
v.	)	
	)	
JOSEPH L. WESLEY,	)	
	)	
Respondent.	)	
_____	)	

**ORDER DENYING PETITION FOR RECONSIDERATION**

Respondent seeks reconsideration of our decision, NTSB Order No. EA-5142, served February 11, 2005. In that decision, we affirmed the Administrator's proposed 180-day suspension of respondent's pilot certificate. We found that respondent acted as pilot-in-command (PIC) of a passenger-carrying Sabreliner jet aircraft without complying with regulatory requirements. Specifically, to be PIC of this aircraft requires proficiency checks and requires a type rating in the aircraft. Respondent had neither.<sup>1</sup>

On reconsideration, respondent continues to argue as he did below that there was insufficient evidence to find that the

<sup>1</sup> The regulations the Administrator claimed, and we found, had been violated were 14 C.F.R. 61.3(a), 61.13(a), 61.58(a)(1), and section 91.13(a).

Administrator met her burden of proving that he was the PIC. Respondent maintains that he believed the other pilot in the aircraft, Dennis Stec (who was hired through Hortman Aviation<sup>2</sup>), was the PIC and that this belief was reasonable in the circumstances. He argues that evidence presented by the Administrator, including the testimony of Mr. Hortman, should not be relied upon and does not satisfy her burden of proof. Respondent also urges that there was a miscommunication here, with each side believing the other was the PIC and was qualified to be the PIC. Respondent suggests that this miscommunication realistically led respondent not to know that the others believed him to be PIC.

There might have been a miscommunication, but this does not preclude a finding that respondent was the PIC. No one disputes that one of them has to have been and was the PIC; the question is which one. All the evidence, with the exception of Mr. Wesley's own testimony, leads to a conclusion that he was the PIC.

First, the testimony of Mr. Hortman and Mr. Stec unequivocally indicates their belief that respondent was the PIC. Respondent says that we erred in finding that Mr. Hortman, "took respondent at his word when respondent told him that he was qualified in the aircraft." *Id.* at 3. Respondent believes this to be error because Mr. Hortman also directed Mr. Stec to speak to respondent and confirm that respondent was qualified to be PIC. The two are not inconsistent. Mr. Hortman could both take respondent at his word (in other words, not ask for documentary proof) and still ask Mr. Stec to confirm that respondent was qualified. This type of challenge and respondent's other challenges to the reliability of Mr. Hortman's testimony are not sufficient to cause us to find the law judge's findings to be arbitrary or capricious. *See, e.g., Administrator v. Jones*, 3 NTSB 3649, 3651 (1981) (law judge required to decide what version of events he found more credible; accepting the testimony of one person over another is not error unless the law judge's credibility determinations were arbitrary and capricious).

Second, Mr. Stec's testimony discussed the functions he performed on the flights and the functions respondent performed - he did not just discuss co-piloting duties he performed, as respondent suggests. Mr. Stec's evidence, which we discussed in our prior decision, supports a finding that respondent performed

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<sup>2</sup> Hortman Aviation is the company that provided Mr. Stec. Mr. Hortman spoke to respondent on the telephone when respondent called to hire a pilot for the flights. Mr. Hortman testified that respondent asked for a co-pilot and that respondent told him that he was qualified to be the PIC.

PIC duties, while Mr. Stec handled only supporting functions. Respondent knew or should have known the difference.<sup>3</sup>

Finally, we continue to believe, despite respondent's criticism, that it was respondent's duty as the owner of the aircraft and arranger of the flights to confirm in whatever way he saw necessary that he had the required, qualified PIC. It was no one else's duty to do so.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's petition for reconsideration is denied;  
and
2. The 180-day suspension of respondent's certificate shall begin 30 days from the service date indicated on this order.<sup>4</sup>

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HEALING, and HERSMAN, Members of the Board, concurred in the above order.

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<sup>3</sup> We specifically do not rely on the fact that respondent flew in the left seat.

<sup>4</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(g).