

SERVED: April 14, 2009

NTSB Order No. EA-5439

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 13<sup>th</sup> day of April, 2009

_____	)	
LYNNE A. OSMUS,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-18296
v.	)	
	)	
MICHAEL GEORGE MANIN,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed the oral initial decision and order of Chief Administrative Law Judge William E. Fowler, Jr., issued on September 16, 2008.<sup>1</sup> The law judge denied respondent's appeal

<sup>1</sup> A copy of the initial decision, an excerpt from the hearing transcript, is attached.

of the Administrator's emergency revocation order,<sup>2</sup> based on respondent's alleged intentional falsification of several applications for his airman medical certificate.<sup>3</sup> We deny respondent's appeal.

On June 20, 2008, the Administrator issued an emergency order revoking respondent's airline transport pilot (ATP), flight instructor, flight engineer, and first-class airman medical certificates; the Administrator subsequently amended this order on July 9, 2008, to correct a "scrivener's error." In the amended order, the Administrator alleged that respondent submitted several applications for an airman medical certificate, from 2000 to 2007, in which respondent answered "no" in response to question 18w on the applications, which certifies that the applicant has "no history of nontraffic conviction(s) (misdemeanors or felonies)." The amended order also stated that the FAA discovered that respondent had two convictions for domestic violence/disorderly conduct that he had not declared on the medical applications. In particular, the amended order stated that respondent was found guilty of such

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<sup>2</sup> Respondent has waived the expedited procedures normally applicable to emergency proceedings.

<sup>3</sup> The Administrator charged respondent with violating 14 C.F.R. § 67.403(a)(1), which provides that no person may make or cause to be made a fraudulent or intentionally false statement on any application for a medical certificate.

charges on October 16, 1995, and on September 8, 1997, in Ohio. As a result, the amended order alleged that respondent's answers to at least four medical certificate applications were knowingly and intentionally false. The amended order concluded with a statement that respondent had a prior history of falsification of medical certificate applications, and that the Board had previously revoked his certificates as a result of such falsifications. Compl. at ¶ 30 (citing Administrator v. Manin, NTSB Order Nos. EA-4303 (1994) and EA-4337 (1995)). The order alleged that respondent had violated 14 C.F.R. § 67.403(a)(1), and ordered revocation of respondent's certificates. Respondent submitted an answer to the Administrator's order, in which he presented two affirmative defenses, based on the Board's stale complaint rule<sup>4</sup> and the doctrine of laches.<sup>5</sup>

The Administrator submitted a motion for summary judgment, and respondent submitted his own motion for summary judgment, in an attempt to dismiss the case. The law judge held a hearing

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<sup>4</sup> Section 821.33 of the Board's Rules of Practice provides that a respondent may move to dismiss the Administrator's allegations when the Administrator has based the complaint on allegations of offenses that occurred more than 6 months prior to the Administrator's advising the respondent as to the reasons for the Administrator's proposed action.

<sup>5</sup> The equitable doctrine of laches may function as a bar in cases in which an unreasonable amount of time has lapsed before a person asserts a right or claim, and in which such delay has caused detriment to the opposing party. Black's Law Dictionary 705 (7<sup>th</sup> ed. 2000).

concerning both motions. At the hearing, the Administrator did not provide any witness testimony, but instead submitted into evidence certified copies showing respondent's charges and convictions in 1995 (Exh. A-1), and in 1997 (Exh. A-2). The Administrator also provided a copy of the Ohio statute that respondent violated (Exh. A-3), a certified copy of respondent's airman medical certification file (Exh. A-4), and a copy of our previous decision in which we concluded that respondent had falsified a medical certificate application (Exh. A-5).

In response to the Administrator's case, respondent did not testify, but presented arguments through his counsel, who asserted that the stale complaint rule precluded the Administrator from pursuing this case, because the Administrator's amended complaint stated that the Administrator became aware of respondent's convictions in 2007. Tr. at 19. Respondent also argued that the doctrine of laches precluded the Administrator from bringing this case, because the convictions against respondent were 11 and 13 years old. Tr. at 13-15. Finally, respondent argued that the Administrator cannot prove that respondent knowingly and intentionally falsified the medical certificate applications because respondent could not have known that he needed to list on his medical applications the "minor misdemeanor" of which he was twice convicted. Tr. at 45, 50. In support of this final argument, respondent submitted

Ohio's classification of offenses. Exh. R-2; Tr. at 45. Respondent's counsel, however, stated that there was "no question" that respondent did not report the convictions on at least one of his medical certificate applications (Tr. at 59), and that this answer was "a mistake" (Tr. at 65-66). At the hearing, respondent appeared to rest his case on the fact that he had been convicted of a "minor misdemeanor" under Ohio State law, and that such a minor misdemeanor need not have been reported. Respondent submitted a State case in support of this argument. Exh. R-2; Tr. at 71-72.

At the conclusion of the hearing, the law judge granted the Administrator's motion for summary judgment. Initial Decision at 73. The law judge dismissed respondent's argument based on the doctrine of laches and the stale complaint rule, because the Administrator "proceeded diligently" to pursue the case, in the interest of safety. Id. at 74. With regard to the substantive issue of whether respondent should have reported the "minor misdemeanor" in response to question 18w on his medical certificate applications, the law judge held that, "minor or otherwise, a misdemeanor is a misdemeanor," and respondent therefore should have included it on his applications. Id. at 75. The law judge concluded his decision by stating that respondent's incorrect answers on the applications at issue amounted to intentional falsifications. Id. at 75-76.

On appeal, respondent asserts that the law judge erred in finding the stale complaint rule and the doctrine of laches inapplicable, and in finding that "minor misdemeanors" under Ohio State law were reportable. Respondent contends that the medical certificate application only requires convictions of misdemeanors and felonies, and that respondent's disorderly conduct convictions were de minimus, and therefore rendered respondent unaware that he would need to report the convictions. Respondent argues that the law judge erred when he stated that "a misdemeanor is a misdemeanor," because question 18w on the medical application does not say, "report ALL convictions of ANY nature within the past three years." Respondent's Br. at 10-11 (emphasis in original). The Administrator opposes each of respondent's arguments, and urges us to affirm the law judge's decision.

First, we note that, under the Board's Rules of Practice, a party may file a motion for summary judgment on the basis that the pleadings and other supporting documents establish that no factual issues exist, and that the party is therefore entitled to judgment as a matter of law. 49 C.F.R. § 821.17(d). We have previously considered the Federal Rules of Civil Procedure to be instructive in determining whether disposition of a case via summary judgment is appropriate. Administrator v. Doll, 7 NTSB 1294, 1296 n.14 (1991) (citing Fed. R. Civ. P. 56(e)). In this

regard, we recognize that Federal courts have granted summary judgment when no genuine issues of material fact exist. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986).<sup>6</sup>

We find respondent's arguments concerning the doctrine of laches and the stale complaint rule do not present a genuine issue of material fact. We have long held that the doctrine of laches is relevant to Board cases only in the context of the stale complaint rule. Administrator v. Robertson, NTSB Order No. EA-5315 at 6-7 (2007) (citing Administrator v. Adcock, NTSB Order No. EA-4507 at 2 (1996), and Administrator v. Brown, 4 NTSB 630, 631 (1982)). Here, the stale complaint rule does not apply, because the Administrator has alleged that respondent lacks the qualifications to hold the certificates that the Administrator seeks to revoke. The stale complaint rule also provides that in those cases where the lack of qualifications is alleged, if an issue of lack of qualifications is presented assuming all of the allegations, stale and timely, are true, the charges should not be dismissed. 49 C.F.R. § 821.33(b); see also Administrator v. Wingo, 4 NTSB 1304 (1984) (to avoid dismissal, allegations need only present an issue of lack of

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<sup>6</sup> A *genuine* issue exists if the evidence is sufficient for a reasonable fact-finder to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255-56 (1986). An issue is *material* when it is relevant or necessary to the ultimate conclusion of the case. Id. at 248.

qualifications). In this case, the Administrator's complaint specifically alleged that respondent had falsified certain medical certificate applications. We have previously held that an allegation of falsification amounts to a lack of qualifications to hold a certificate. Administrator v. Brassington, NTSB Order No. EA-5180 at 14 (2005) (stating that, "[i]t is undisputed that an airman who falsifies required documents lacks qualifications to hold an airman certificate."); see also Thunderbird Propellers, Inc. v. FAA, 191 F.3d 1290, 1295 (10<sup>th</sup> Cir. 1999) (finding respondent lacked qualifications to hold a certificate where the respondent intentionally falsified required records). Given this precedent, we do not find respondent's arguments concerning the stale complaint rule and the laches doctrine to be persuasive.

Concerning respondent's argument that he did not intentionally falsify the records because he was merely convicted of a "minor misdemeanor" in Ohio, we also find this argument unavailing. With regard to cases in which the Administrator alleges that a respondent intentionally falsified a medical certificate application, we have long adhered to a three-prong standard to prove a falsification claim; in this regard, in intentional falsification cases, the Administrator must prove that a pilot (1) made a false representation, (2) in reference to a material fact, (3) with knowledge of the falsity

of the fact. Hart v. McLucas, 535 F.2d 516, 519 (9<sup>th</sup> Cir. 1976) (citing Pence v. United States, 316 U.S. 332, 338 (1942)). As the Administrator has argued, we have also held that a statement is false concerning a material fact under this standard if the alleged false fact could influence the Administrator's decision concerning the certificate. Administrator v. McGonegal, NTSB Order No. EA-5224 at 4 (2006); Administrator v. Reynolds, NTSB Order No. EA-5135 at 7 (2005); see also Janka v. Dep't of Transp., 925 F.2d 1147, 1150 (9<sup>th</sup> Cir. 1991).

With regard to this case, respondent has stipulated to the fact that he was convicted in 1995 and 1997 of disorderly conduct charges due to domestic violence, and that he paid fines as a result. Moreover, the Administrator has provided evidence to prove respondent's convictions. See Exhs. A-1 and A-2 at 3 (stating respondent was "found guilty"). Respondent contends, however, that he could not have known that he would be required to report such a "minor misdemeanor" on his medical certificate application. We have previously rejected a respondent's own interpretation of the requirements of a medical certificate. Administrator v. Martinez, NTSB Order No. EA-5409 at 9-10 (2008) (citing Administrator v. Boardman, NTSB Order No. EA-4515 at 8-9 (1996), and Administrator v. Sue, NTSB Order No. EA-3877 at 5 (1993), for the proposition that a person of ordinary intelligence should be able to interpret question 18w on the

medical certificate application to include all nontraffic convictions of any type); accord Administrator v. Dillmon, NTSB Order No. EA-5413 at 8-10 (2008). A respondent's incorrect answers on his medical applications amount to an intentional falsification under Board precedent when the respondent was cognizant of their falsity. See, e.g., Dillmon, supra, at 10-11; McGonegal, supra, at 9. Overall, respondent's argument concerning his failure to report his 1995 and 1997 convictions because they amounted to "minor misdemeanors" does not present a genuine issue of material fact. As such, we uphold the law judge's disposition of this case via summary judgment.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed; and
3. The Administrator's revocation of respondent's ATP, flight instructor, flight engineer, and first-class airman medical certificates is affirmed.

ROSENKER, Acting Chairman, and HERSMAN, HIGGINS, and SUMWALT, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of: \*

ROBERT A. STURGELL, \*

ACTING ADMINISTRATOR, \*

Federal Aviation Administration, \*

Complainant, \*

v. \* Docket No.: SE-18296

JUDGE FOWLER

MICHAEL GEORGE MANIN, \*

Respondent. \*

\* \* \* \* \*

U.S. Tax Court  
Celebrezze Federal Building  
1240 East 9th Street, Room 3013  
Cleveland, Ohio

Tuesday,  
September 16, 2008

The above-entitled matter came on for hearing,  
pursuant to notice, at 10:00 a.m.

BEFORE: WILLIAM E. FOWLER, JR.  
Chief Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

MICHAEL F. MCKINLEY, ESQ.  
Office of Regional Counsel  
Federal Aviation Administration  
2300 E. Devon Avenue  
Des Plaines, Illinois 60018  
(847) 294-7109

On behalf of the Respondent:

JOSEPH M. LAMONACA, ESQ.  
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Chadds Ford, Pennsylvania 19317  
(610) 558-3376

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ORAL INITIAL DECISION AND ORDER

JUDGE FOWLER: Thank you very much, gentlemen. As I said earlier, at least in my opinion, this is a case of first impression. We have a total of four exhibits admitted into the record on behalf of the Administrator, and five exhibits on behalf of the Respondent. I have reviewed these exhibits, and we've had lengthy argument here pertaining to this case.

We know why we're here. The Administrator's has charged, and I have later denied an Administrator's Motion for Summary Judgment and the Respondent's Cross Motion for Summary Judgment as to whether or not the Respondent Michael G. Manin was required to place a disorderly conduct charge in 1995 and 1997 on his medical applications. That's why we are here.

I'm going to try to be as brief and concise as I can be. We have had extensive arguments on this renewed Motion for Summary Judgment. The Administrator's additional argument and the evidence adduced thereby is circumstantial, but it is my final analysis and determination that it is enough to have me grant the Administrator's Motion for Summary Judgment. This is

1 not the usual case, by far.

2           We have a Respondent here who, not only was the  
3 holder of an airline transport pilot's certificate, which is  
4 the highest certification you can get in the aviation realm  
5 where the United States is concerned. He has a previous history  
6 of airman medical certification application qualifications  
7 which certainly alerts me that he is not the average or the  
8 typical airman.

9           I cannot disagree, in essence, with the earlier case  
10 of David Hinson versus Michael Maddin, decided by Judge Patrick  
11 P. Geraghty. It is almost hard to believe, on my part, that  
12 when you're applying for a first class airman medical  
13 certificate that any conviction, you would not answer  
14 affirmatively about it. It is very difficult and we cannot see  
15 or read into an individual's mind as to whether he had actual  
16 knowledge or an element of fraud when he made this application  
17 on October 23, 2007.

18           The fact that the Administrator didn't bring an  
19 action here until February of 2008, to me, the time element is  
20 inconsequential. The Administrator, and the Board has held on  
21 so many occasions, particularly in emergency proceedings that  
22 upon the time and date when the Administrator got first  
23 knowledge, that he proceeded diligently, that was sufficient to  
24 enforce the Administrator's burden of the public safety his  
25 primary concern.

1           It is my determination, after reviewing the totality  
2 of the evidence we have before us, the exhibits, and the  
3 arguments here, that there is substantial, although  
4 circumstantial, there is substantial and sufficient  
5 circumstantial evidence to know that the Respondent knew he had  
6 been convicted of these two disorderly conduct charges in  
7 October 1995 and September 1997. He, certainly with his  
8 experience, knowledge, training, and background, and certainly  
9 in view of a previous violation, should have been put on notice  
10 and should have answered the question accordingly, Question 18W,  
11 that he had had convictions.

12           Much has been made, and it's a very interesting point  
13 about the Ohio Revised Code, classifying these two disorderly  
14 conduct convictions as minor misdemeanors, but I cannot  
15 disagree with the Administrator's position that minor or  
16 otherwise, a misdemeanor is a misdemeanor, and it should have  
17 been answered to accordingly on the Respondent's medical  
18 application.

19           There is ample Board precedent by the Board, in prior  
20 cases, that an incorrect answer on a medical application  
21 constitutes sufficiently a prima facie proof of intentional  
22 falsification, and that, I think, that's apropos here. Other  
23 than circumstantially here, the Administrator has not proven on  
24 this recent medical application where the disorderly conduct  
25 charges are concerned, that the Respondent knowingly and

1 intentionally or fraudulently answered as he did with relation  
2 to these two disorderly conduct convictions.

3 We don't know that, but based on the remaining  
4 circumstantial evidence, coupled with the prior convictions and  
5 the record, as set forth in Administrator's Exhibit A-4,  
6 relative to the date of 9/7/2005, that in and of itself, in  
7 view of the Respondent's history, would be enough to sustain  
8 the Administrator's Motion for Summary Judgment by a fair and  
9 reasonable preponderance of the evidence, as adduced before me  
10 at this time.

11 ORDER

12 SO, MY RULING IS THAT: On the Motion for Summary  
13 Judgment, on behalf of the Administrator and the  
14 Administrator's amendment to the Complaint concerned, is  
15 granted and affirmed, this, of course, affirms the order of  
16 revocation where the Respondent is concerned. This decision  
17 and Order is issued by William E. Fowler, Junior, Chief Judge  
18 for the National Transportation Safety Board.

19 Off the record.

20 (Off the record.)

21 (On the record.)

22 JUDGE FOWLER: On the record, let the record indicate  
23 that, as the Judge in this proceeding, I have granted the  
24 Administrator's Motion for Summary Judgment after extensive,  
25 thorough and lengthy presentations and arguments by both

1 Counsel on both sides of this case, coupled with the admission  
2 of a minimum of nine exhibits, which have been duly admitted  
3 into the hearing record in this proceeding, as it's presently  
4 constituted.

5 That being so, I will declare the hearing closed. We  
6 stand adjourned, ladies and gentlemen.

7 (Whereupon, at 2:20 p.m., the hearing in the above-  
8 entitled matter was concluded.)

9

10

11 EDITED AND DATED ON \_\_\_\_\_

12 October 6, 2008

WILLIAM E. FOWLER, JR.

13

Chief Judge