

SERVED: April 22, 2009

NTSB Order No. EA-5441

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 April, 2009

LYNNE A. OSMUS,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18279
v.)	
)	
JON W. HEYL,)	
)	
Respondent.)	
)	

ORDER DENYING RECONSIDERATION

Respondent seeks reconsideration of our decision in this proceeding, NTSB Order No. EA-5420, served December 15, 2008. In that decision, we affirmed the Administrator's order and the law judge's initial decision, which ordered revocation of respondent's airline transport pilot and any medical certificates that respondent held pursuant to 14 C.F.R. §§ 61.14(b), 67.107(b)(2), 67.207(b)(2), and 67.307(b)(2). In our decision, we determined that respondent had refused to complete a drug test, as defined by 14 C.F.R. part 121, App. I, § II, when he first failed to provide a sufficient amount of urine for the test, and subsequently left the testing facility

when staff at the testing facility instructed him to wait until he was able to provide another urine specimen.

Respondent has now filed a petition for reconsideration under 49 C.F.R. § 821.50. Section 821.50(c) requires that such petitions "state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon." Section 821.50 also provides for the submission of arguments based on new matter, when the petitioner sets forth the new matter in "affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable," and directs petitioners to "explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed." *Id.* § 821.50(c). Section 821.50(d) provides that the Board will not consider, and will summarily dismiss, repetitious petitions for reconsideration.

In his petition, respondent merely reargues the facts of this case, and discusses several areas in which he believes our decision was wrong. Respondent states that the law judge and the Board misapprehended the main issue of this case by determining that the case rested upon whether respondent was authorized to depart from the collection facility before the conclusion of his urine test. Instead, respondent states that this case should revolve around whether the Administrator proved that respondent's departure was not authorized, and that the Administrator did not fulfill this burden of proof. Respondent argues that he provided a complete urine sample, and that the Custody and Control Form indicated his compliance because it showed that respondent's sample was split for testing. Respondent contends that the collection facility erred in several aspects concerning the test, and that the Custody and Control Form was unreliable in several respects. Respondent concludes that our opinion in the underlying case is not supported by the weight of the evidence. The Administrator has replied to respondent's arguments, and urges us to deny respondent's petition.

We deny respondent's petition for reconsideration. First, respondent has not presented any new matter in accordance with 49 C.F.R. § 821.50(c). Respondent's arguments concerning our assessment of the facts in the underlying case and our application of the legal standard concerning which party has the burden of proof on the issue of whether respondent was authorized to depart from the facility neither establish error in our original decision nor otherwise present a valid basis for

reconsidering it under § 821.50. Respondent merely attempts to reargue points that he made in the underlying case, and contends that our analysis in that decision was incorrect. We note that our underlying decision on the merits of this case fully addressed this issue when we found that respondent did not dispute that staff at the collection facility instructed him to stay until he could provide a third urine sample, nor did he dispute that he left the facility before providing a sample. Administrator v. Heyl, NTSB Order No. EA-5420 at 12-13 (2008). As a result, we determined that the Administrator had proven that respondent "refused" to submit a urine sample under 49 C.F.R. § 40.191(a)(2). To the extent that respondent attempts to argue that his departure was authorized, respondent has the burden to prove such a contention. Administrator v. Nadal, NTSB Order No. EA-5308 at 10 (2007) (citing Administrator v. Gibbs, NTSB Order No. EA-5291 at 2 (2007); Administrator v. Kalberg, NTSB Order No. EA-5240 at 3 (2006); Administrator v. Tsegaye, NTSB Order No. EA-4205 at n.7 (1994)).

We also conclude that respondent's arguments that the collection facility erred when collecting and documenting respondent's attempts to provide a urine sample did not refute the Administrator's showing that respondent departed from the collection facility without authorization. Respondent's attempts to reargue these determinations do not establish error in our decision or otherwise present a valid basis for reconsideration.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for reconsideration is denied.

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