

SERVED: June 25, 2009

NTSB Order No. EA-5459

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 24th day of June, 2009

_____)	
J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18415
v.)	
)	
ROBERT JOSEPH HAYES,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

The Administrator appeals from the oral initial decision of Chief Administrative Law Judge William E. Fowler, Jr., issued on January 13, 2009, following an evidentiary hearing.¹ The law judge granted respondent's appeal of the Administrator's

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

emergency order of revocation of respondent's mechanic certificate with airframe and powerplant ratings, inspection authorization, and commercial pilot certificate,² in which the Administrator alleged that respondent violated 14 C.F.R. §§ 43.12(a)(1),³ 43.13(a) and (b),⁴ and 43.15(a)(1),⁵ when he performed an annual inspection of a Beech 35 aircraft and made a logbook entry indicating that he had removed and replaced the battery from the aircraft's emergency locator transmitter (ELT), and when he returned the aircraft to service even though the ELT battery had expired and the aircraft had corrosion. We deny the Administrator's appeal.

² Respondent waived the expedited procedures normally applicable to emergency proceedings.

³ Title 14 C.F.R. § 43.12(a)(1) provides that no person may make or cause to be made a fraudulent or intentionally false entry in any record or report that the Administrator requires to be made, kept, or used to show compliance.

⁴ The relevant portions of section 43.13 require "[e]ach person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance": (a) to use "the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator," and (b) to do the work in a manner to ensure that the aircraft or part "will be at least equal to its original or properly altered condition."

⁵ Section 43.15(a)(1) states that each person conducting an inspection required under 14 C.F.R. parts 91, 125, or 135 must perform the inspection so as to determine whether the aircraft, or its portions under inspection, meets all applicable airworthiness requirements.

After issuing the emergency order of revocation, the case proceeded to hearing, at which the Administrator's counsel called two witnesses to testify and provided numerous exhibits. Daniel Spera, an aviation safety inspector at the Flight Standards District Office (FSDO) in Teterboro, New Jersey, first testified that he investigated respondent after the aircraft was involved in an accident in August 2008. Inspector Spera stated that, in examining the aircraft and reviewing its records, he discovered that the battery for the ELT was expired, and that the aircraft had a significant amount of corrosion. He testified that the logbook stated that respondent "removed and replaced" the ELT battery, which Inspector Spera interpreted as "replaced with a new part," rather than "reinstalled." Tr. at 72-73, 90-92; Exh. A-10 at ¶ 9 (logbook entry). Inspector Spera testified that the records he reviewed made him believe the ELT battery was not expired, and the aircraft was in an airworthy condition, but after further investigation he concluded that respondent made no attempt to follow the guidelines of 14 C.F.R. § 91.207(f)(10),⁶ and that the aircraft was not airworthy because

⁶ Section 91.207 requires that each civil aircraft contain an ELT. Subsection (f), however, states that an ELT is not required in certain situations, such as when the aircraft is engaged in design and testing, or training activities. Subsection (f)(10) exempts an aircraft during any period for which the transmitter has been temporarily removed for inspection, repair, modification, or replacement, as long as the logbook indicates the ELT has been removed, and the aircraft

its battery was expired. Inspector Spera opined that respondent was aware that replacement of the ELT battery was overdue when he made the logbook entry, and knew he had not replaced the battery with a new one.

Inspector Spera testified that he observed a significant amount of corrosion on the aircraft, which he believed could not have developed in the 8 months between the annual inspection and his observation after the August 2008 accident. He acknowledged that the aircraft was kept in a "somewhat corrosive environment" in New Jersey, but that he had spent his entire career in New Jersey and had never seen this type of corrosion occur in such a short period of time. Tr. at 106-107. The Administrator introduced several photographs that depict the corrosion. Exhs. A-17-A-24 (photographs, including some taken in August and November 2008). Inspector Spera identified a portion of the aircraft's shop manual and an excerpt from an FAA Advisory Circular, which states that corroded parts must be replaced when corrosion is severe, and requires consultation with the designated engineering representative (DER) before returning the aircraft to service. Inspector Spera stated that respondent did not appear to have contacted a DER concerning the corrosion, but simply returned the aircraft to service.

(..continued)
contains a placard indicating such removal.

Thomas Mancuso, an aviation safety inspector and principal maintenance inspector from the Teterboro FSDO, also testified on behalf of the Administrator. The law judge accepted him as an expert in aviation maintenance and corrosion after the inspector explained that he previously worked at an airport near the ocean, and had significant experience with identifying corrosion on aircraft. Inspector Mancuso stated that he observed considerable corrosion on the flaps of the aircraft at issue, and that he did not believe such corrosion developed in only 8 months. Tr. at 216-17. He also testified that he discussed the corrosion with the manufacturer, and showed the photographs to airworthiness staff at Hawker Beechcraft. Inspector Mancuso stated that the staff informed him that the corrosion depicted in the photographs was unacceptable (Tr. at 219; Exh. A-29), but he acknowledged that the staff did not conduct any structural analysis on the aircraft.

In response to the Administrator's case, respondent called the aircraft's owner, John Heber, to testify. Mr. Heber stated that he keeps the aircraft outdoors in New Jersey, approximately 10 miles from the ocean, and that he had not had the aircraft washed between the December 2007 annual inspection and the August 2008 accident. He testified that he assisted with the December 2007 inspection, and that respondent told him during the inspection that the ELT battery needed replacement. Tr. at

261. Mr. Heber stated that he previously replaced the battery for the ELT when necessary and that he had ordered a battery for the ELT at issue but had forgotten to install it. He also testified that he knew the expired battery was still functioning, and that he understood the logbook entry to mean that respondent reinstalled the expired battery, rather than replaced it with a new one.

Regarding the corrosion, Mr. Heber testified that the aircraft's condition when he saw it in December 2007 was not as it appeared in the photographs from the following August, and that, if the aircraft had corrosion as it appeared in the photographs, he would have contacted respondent. Mr. Heber stated that, prior to his August 2008 flight that resulted in an accident, he conducted an extensive pre-flight inspection and did not notice any corrosion; he acknowledged, however, that he did not extend the flaps during the pre-flight. On cross-examination, he testified that he saw "minor" corrosion in October 2005 and December 2007. Tr. at 292-93.

Respondent testified on his own behalf. He stated that he removed the ELT unit because he saw that the battery had expired, and that he conducted two tests on it, both of which indicated the battery was still operable. He testified that Mr. Heber told him he would get another battery for the ELT, and that Mr. Heber knew that respondent put the ELT battery back in

the aircraft and knew what respondent's logbook entry meant. Respondent acknowledged that, "it may not have been the best choice of words" to say that he "replaced" the ELT battery when he only reinstalled it. Tr. at 347. He stated, however, that he believed the logbook entry conveyed that the ELT needed a new battery. He testified that he left a blank space in logbooks on previous occasions when an owner planned to replace a certain item, such as a battery. On cross-examination, respondent stated that he does not usually make a logbook entry when he merely checks and reinstalls an ELT battery, but that he does make such an entry when he replaces the battery with a new one.

Regarding the alleged corrosion, respondent stated that he has conducted eight to ten inspections of this aircraft, and that he replaced some items due to corrosion during the December 2007 inspection. Tr. at 313, 318-19; Exh. A-11 at ¶ 14 (logbook entry stating, "[r]emoved and replaced the right flap with a serviceable flap and painted"). Respondent testified that he was shocked at the photographs that depict the corrosion, because the aircraft did not appear corroded when he inspected it. He stated that, had he observed corrosion during the inspection, he would have replaced the corroded parts or items. He also testified that he would have seen corrosion when he inspected the aircraft, if it existed, because he conducts a thorough inspection. He described the atmosphere where

Mr. Heber keeps the aircraft as "abrasive," and described a cogeneration plant on the same property as the airport. Tr. at 332-33.

Finally, respondent called John Colaluca to testify as an expert in general aviation maintenance. Mr. Colaluca opined that respondent did not make a false or fraudulent statement in the logbook concerning the ELT battery, and stated that he had seen similar entries in logbooks. Mr. Colaluca testified that he understood respondent's intent in the entry, but that he recognized that the entry could cause confusion. He further stated that an aircraft can be returned to service even if its ELT battery is expired, because airworthiness is an issue found in the operational regulations in 14 C.F.R. part 91, rather than part 43, which governs maintenance requirements. He stated that 8 to 11 months between the inspection and the discovery of the corrosion was too long to determine whether the aircraft had the same amount of corrosion when respondent inspected it. He opined that respondent did not violate the regulations as charged, and stated that he was surprised the Administrator took action for these alleged violations.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he concluded the Administrator had not fulfilled the burden of proving that respondent violated §§ 43.12(a)(1), 43.13(a) and (b), and 43.15(a)(1), as alleged.

The law judge acknowledged that the aircraft contained some "fairly extensive" corrosion, but noted the aircraft was kept near the ocean. Initial Decision at 483. He made a credibility finding in favor of respondent with regard to the alleged corrosion, and acknowledged that respondent replaced the right flap when he observed corrosion on it, and that this indicated he would take appropriate action if he saw corrosion. Id. at 483-84. Concerning the ELT battery, the law judge believed respondent's testimony that he meant he reinstalled the existing battery, rather than replaced it with a new one. The law judge stated that he did not believe that respondent misled the Administrator when he made this logbook entry, but that respondent merely used a "poor choice of words." Id. at 490. As a result, the law judge determined that respondent did not falsify the logbook entry.

On appeal, the Administrator argues that the law judge erred in not finding violations of §§ 43.12(a)(1) and 43.13(a) and (b) because respondent returned the aircraft to service and made a logbook entry indicating that he replaced the ELT battery. In this regard, the Administrator argues that the law judge misconstrued the plain meaning of the words in the logbook entry, that the evidence clearly indicated the Administrator established the elements of falsification, that respondent's interpretation of the word "replaced" is contrary to the

definition of the word elsewhere in the regulations, and that respondent's past practices with logbook entries indicate the entry regarding the ELT battery falsely meant that respondent replaced the battery with a new one, rather than reinstalled the existing battery. Concerning respondent's return of the aircraft to service with the expired battery, the Administrator argues that the law judge erred because respondent did not follow the guidelines in § 91.207(f)(10). The Administrator further argues that the law judge erred in not finding violations of §§ 43.13(a) and (b) and 43.15(a)(1) because respondent returned the aircraft to service when it had a substantial amount of corrosion. In this regard, the Administrator argues that the law judge's finding was contrary to the weight of the evidence, in that the law judge agreed that the corrosion was extensive. The Administrator bases this argument on the contention that the testimony from Inspectors Spera and Mancuso was more detailed and credible than the testimony from respondent's witnesses. Respondent contests each of the Administrator's arguments, and urges us to uphold the law judge's decision.

We first note that the principal issues in this case—whether the Administrator proved that respondent falsified the logbook entry when he wrote that he "replaced" the ELT battery, and whether the Administrator proved that respondent erred when

he returned the aircraft to service when it was allegedly corroded and had an expired ELT battery—revolve around the law judge's credibility assessments. We recognize that the evidence, which consists of copies of the logbook, photographs of corroded parts, and witness testimony, is directly conflicting. On one hand, the Administrator provided not only a copy of the logbook entry, but also copies of previous entries showing that respondent likely would not have written that he replaced the ELT battery when he meant that he reinstalled the existing one. The Administrator also provided testimony and photographs indicating the corrosion on the aircraft was extensive, and that it would not have developed in only 8 months. Respondent, however, testified that he did not mean that he replaced the battery with a new one, and this testimony comported with that of Messrs. Heber and Colaluca. Moreover, respondent replaced the right flap when he inspected it in December 2007 because it was corroded; the Administrator did not attempt to explain why respondent replaced that flap, but ignored the left flap and other parts of the aircraft if they were corroded. The Administrator also conceded that § 91.207 is an operational regulation, and did not charge a violation of this regulation; as such, the Administrator has not proven that respondent's failure to comply with § 91.207 amounted to a violation of part 43.

Perhaps most importantly, the Administrator's case concerning the alleged corrosion was not based on any direct evidence. Respondent correctly points out that the only direct evidence concerning whether corrosion was present at the time of the inspection comes from respondent's and Mr. Heber's testimony, because they were the only people who observed the aircraft at the time of the inspection. The Administrator's witnesses did not examine the aircraft until after it was involved in an accident 8 months following the inspection.

We have long held that the Administrator must prove each element of all alleged charges by a preponderance of the evidence.⁷ As such, when the evidence appears to conflict and the case is close, the party with the burden loses.⁸

In addition, while we conduct a de novo review of each case to determine whether the Administrator has fulfilled the burden of proof, we defer to the credibility determinations of law

⁷ Administrator v. Glennon and Shewbart, NTSB Order No. EA-5411 at 14 (2008) (citing Administrator v. Opat, NTSB Order No. EA-5290 at 2 (2007); Administrator v. Schwandt, NTSB Order No. EA-5226 at 2 (2006); and Administrator v. Van der Horst, NTSB Order No. EA-5179 at 3 (2005)).

⁸ See Schaffer v. Weast, 546 U.S. 49, 56 (2005) (citing 2 J. Strong, McCormick on Evidence § 342, p. 433 (5th ed.1999), and Dir., Office of Workers' Comp. Programs v. Greenwich Collieries, 512 U.S. 267, 272 (1994), which provide that the concept of burden of proof is divided into two burdens: the "burden of persuasion," which focuses on which party loses if the evidence is closely balanced; and the "burden of production," which focuses on which party bears the obligation to come forward with the evidence at different points in the proceeding).

judges unless they are arbitrary and capricious, because law judges are in the best position to evaluate the credibility of witnesses.⁹ In Administrator v. Nickl, NTSB Order No. EA-5287 (2007), we recognized that the central issue in the case rested on the law judge's credibility determination with regard to the witnesses who testified, and we deferred to the law judge's credibility assessments concerning the witnesses.

Here, the issues of whether respondent falsified the logbook entry, and whether he erred in returning the aircraft to service after noticing corrosion, rest upon the credibility of his testimony. The law judge specifically found respondent credible with regard to both of these issues. Initial Decision at 484, 490. In particular, the law judge concluded that respondent meant that he reinstalled the existing battery when he wrote "replaced" in the logbook. Although we do not condone use of ambiguous language in logbooks, and we remind respondent that the language in a logbook entry should not lack clarity, we cannot disagree with the law judge's conclusion, which is based on his credibility determination. Moreover, with regard to the presence of corrosion, the Administrator has not provided any direct evidence to cause us to overturn the law judge's

⁹ Administrator v. Smith, 5 NTSB 1560 (1986); see also Administrator v. Taylor, NTSB Order No. EA-4509 at 7 (1996) (stating that, "the law judge sees and hears the witnesses, and he is in the best position to evaluate their credibility").

determination that the Administrator did not prove that the parts at issue were corroded at the time of respondent's inspection.

With regard to whether respondent erred when he returned the aircraft to service with an expired ELT battery, we note that the Administrator has failed to prove that respondent violated §§ 43.13(a) and (b) and 43.15(a)(1) when he returned the aircraft to service with the expired battery. The Administrator stipulated that the regulations do not state that an aircraft is unairworthy if it does not have a functioning ELT. Tr. at 179. Although the Administrator's witnesses opined that an expired ELT battery would render an aircraft unairworthy, neither the Administrator's counsel nor witnesses could dispute that § 91.207 is an operational regulation, and that respondent did not operate the aircraft. Moreover, as stated above, the Administrator did not charge respondent with a violation of § 91.207, but with violations of §§ 43.13(a) and (b) and 43.15(a)(1). In this regard, the Administrator asks us to correlate the requirements of §§ 43.13(a) and (b) and 43.15(a)(1) with the requirement at 91.207(f)(10). Tr. at 82, 84 (Inspector Spera's testimony that an aircraft can only be returned to service without a functioning ELT if the mechanic complies with requirements listed at § 91.207(f)(10)). Although we are aware of the importance of a functioning ELT and do not

dispute that all aircraft described at § 91.207 must have a functioning ELT, the Administrator has not established that § 91.207 applies to a mechanic, in addition to a pilot. As we stated in Administrator v. Glennon and Shewbart, NTSB Order No. EA-5411 (2008), the plain language of a regulation will govern our interpretation of the regulation. In the case at hand, the plain language requires operation of an aircraft, and in this case, respondent did not operate the aircraft.¹⁰ As such, we are compelled to find that respondent's approval of the aircraft for return to service did not constitute a violation of the regulations that the Administrator charged.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and
2. The law judge's decision is affirmed.

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

¹⁰ Section 91.207(a) states that, "[e]xcept as provided in paragraphs (e) and (f) of this section, no person may operate a U.S.-registered civil airplane" unless they comply with the requirements listed in this section. (emphasis added).

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

* * * * *

In the matter of:

ROBERT A. STURGELL,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

ROBERT JOSEPH HAYES,

Respondent.

* * * * *

Docket No.: SE-18415
JUDGE FOWLER

U.S. Tax Court
U.S. Custom House
200 Chestnut Street
Courtroom 300
Philadelphia, Pennsylvania

Tuesday,
January 13, 2009

The above-entitled matter came on for hearing,
pursuant to notice, at 9:30 a.m.

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

APPEARANCES:

On behalf of the Administrator:

DAVID COHEN, ESQ.
Office of Regional Counsel
Federal Aviation Administration
Eastern Region
One Aviation Plaza
Jamaica, New York 11434

On behalf of the Respondent:

GREGORY S. WINTON, ESQ.
Yodice Associates
South Building, Suite 875
601 Pennsylvania Avenue, NW
Washington, D.C. 20024

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ORAL INITIAL DECISION AND ORDER

16 This is a proceeding before the National
17 Transportation Safety Board held pursuant to the provisions
18 of the Federal Aviation Act of 1958. As that Act was
19 subsequently amended setting forth the Board's rules of
20 practice in air safety proceedings.

21 On the Appeal of Robert Joseph Hayes from an
22 Emergency Order of Revocation dated October 29, 2008. The
23 Emergency Order of Revocation, which is the complaint in this
24 proceeding, was issued by the Administrator of the Federal
25 Aviation Administration through his regional counsel, Eastern

1 Region of the Federal Aviation Administration, which seeks to
2 revoke the airframe powerplant mechanic certificate of the
3 Respondent, number (omitted), and the Emergency Order of
4 Revocation seeks to revoke the inspection authorization
5 certificate, number (omitted). And also the revocation of
6 Respondent Hayes' commercial pilot certificate, number
7 (omitted).

8 The Administrator's Emergency Order of Revocation, as
9 provided by the National Transportation Safety Board rules of
10 practice, was issued by the regional counsel of the Eastern
11 Region of the Federal Aviation Administration.

12 This matter has been heard before this United States
13 Administrative Law Judge and as is provided by the Board's
14 Rules of Practice in emergency proceedings, specifically,
15 section 821.50 of those rules, it is mandatory that the Judge
16 in this proceeding issue an oral initial decision following the
17 conclusion of the proceeding.

18 Following notice to the parties, this matter came on
19 for trial in Philadelphia, Pennsylvania on January 12th and
20 13th, 2009. The Administrator was well and ably represented by
21 David Cohen, Esquire of the regional counsel's office, Eastern
22 Region of the Federal Aviation Administration. The Respondent
23 in this proceeding, Robert Joseph Hayes was very ably
24 represented by Gregory Winton, Esquire.

25

1 Both parties have been afforded the opportunity to
2 offer evidence, to call, examine, and cross-examine witnesses.

3 In addition, the parties were afforded the opportunity to make
4 final argument in support of their respective positions.

5 I have reviewed the totality of the testimony, the
6 evidence and the documentary exhibits set forth during the
7 course of this proceeding.

8 The Administrator, during the course of the
9 presentation of the Administrator's case, introduced upwards of
10 31 exhibits. The Administrator has had two witnesses testify.
11 Respondent has, introduced upwards of nine exhibits and has had
12 three witnesses testify, on behalf of the Respondent's side of
13 the case.

14 This is in my opinion, a different and somewhat
15 strange type of case. The two inspectors who testified on
16 behalf of the Administrator, Daniel Spera, Jr., who is a FAA
17 principal maintenance inspector, holds an airline transport
18 pilot certificate and an inspection authorization as well,
19 might have coined the case the "red flag" case, because the
20 instant he testified that he saw the expiration date on the
21 emergency locator transmitter battery, that it was over three
22 years old, he said that in his mind, a red flag went up.

23 Perhaps, ladies and gentleman, if you think about it,
24 that's why we're all here. Maybe that's why we've been here
25 two days. I'm going to add some additional remarks during the

1 course of my decision, before I conclude in reference to this
2 proceeding.

3 The second witness on the behalf of the
4 Administrator, after Inspector Spera had testified copiously
5 and voluminously about the expiration date of the aforesaid
6 battery that I just mentioned, and during his testimony the
7 Administrator's Exhibit A-15 was introduced on behalf of the
8 Administrator, which was Respondent Hayes' response to the
9 letter of investigation that he had received from the FAA
10 following the crash of the aircraft, the Bonanza aircraft that
11 we're concerned with here, in August of 2008.

12 Inspector Spera, if I neglected to say, was
13 designated as general maintenance expert. Following his
14 lengthy testimony, the second witness on behalf of the
15 Administrator was Inspector Thomas Mancuso, who is an aviation
16 safety inspector and a mechanic with inspection authorization,
17 formerly director of maintenance with a private company
18 concerning aviation matters.

19 Inspector Mancuso was likewise designated as general
20 maintenance expert during the course of the proceeding. During
21 the course of his testimony, based on the corrosion found on
22 the Beech 35 aircraft, commonly referred as Bonanza aircraft,
23 that -- because of the corrosion, the aircraft was not --
24 should not be flown safely.

25 Turning to the Respondent's case, the first witness

1 on behalf of the Respondent was John Heber, who is owner of the
2 aircraft that we're concerned with, the Beech Bonanza. To put
3 it mildly, Mr. Heber is a real aviation and "aircraft buff", to
4 use the ordinary language of the streets. Here he had an
5 aircraft of exceptional age. This aircraft was over 30 years
6 old when he had it rehabilitated and I believe Mr. Heber
7 testified, as did some of the other witnesses, that this
8 aircraft had been flown very little, had to be put together,
9 and was very seldom washed or cleaned up until the crash of the
10 aircraft in August of 2008 due to the collapse of the landing
11 gear.

12 It was interesting to note during Mr. Heber's
13 testimony that he assisted Respondent Hayes in the annual
14 inspection that we're so concerned with in this proceeding. As
15 you all recall, the annual inspection took place on December
16 2nd, 2007.

17 You may further recall that this was not unusual,
18 that Mr. Heber had assisted Respondent Hayes during the
19 performance of many annual inspections performed by Respondent
20 Hayes and Respondent Hayes testified in his opinion, Mr. Heber
21 knew more about aircraft in general than he did. Bear in mind
22 that Respondent Hayes has had over 30 years of maintenance
23 work, being the possessor of a mechanic airframe powerplant
24 certificate with inspection authority, and in the last 15 years
25 Respondent Hayes has been the holder of a commercial pilot

1 certificate.

2 During the course of Respondent Hayes' testimony,
3 during the 30 years of his experience as an airframe powerplant
4 mechanic with inspection authorization, it came out that he has
5 performed innumerable annual inspections on various aircraft,
6 including, according to Respondent Hayes' testimony, 10 to 15
7 inspections, or 10 to 15 annual inspections, for Mr. Heber's
8 aircraft.

9 During the course of Respondent's testimony, the
10 Respondent testified that Administrator's exhibits A-17, A-18,
11 A-19, A-20, A-21, A-22, A-23 and A-24, which Administrator,
12 during the course of his presentation of Administrator's case,
13 set forth that these exhibits, A-17 through A-24, indicated
14 corrosion on Mr. Heber's aircraft. Corrosion to the extent,
15 which was determined by the FAA inspectors in August of 2008
16 following the unfortunate crash of this aircraft, to be one of
17 the reasons why this Emergency Order of Revocation was brought
18 against Respondent Hayes.

19 Now I said the aspect of corrosion, the amount of
20 corrosion, which on some of the parts was fairly extensive, as
21 determined in August of 2008 by the FAA, and that connection,
22 before I forget to make it, the location of the aircraft in or
23 about the state of New Jersey close to water containing much
24 salt, which has been testified on both sides of this case, it
25 would certainly accelerate the amount of corrosion as was found

1 on the aircraft after the crash in August of 2008.

2 In that connection, turning to Respondent's
3 testimony, what Respondent did, what he did not do, over the
4 course of the performance of his annual inspection of December
5 2, 2007 before he returned this aircraft to service as
6 airworthy. Respondent testified when he saw corrosion, he
7 would replace the part as he did with the right flap. Not
8 noticing any other corrosion at that time, December 2, 2007, he
9 did not make any replacement, at least reinstall any parts,
10 because of corrosion that he noticed.

11 I mention again in passing, Respondent Hayes, is
12 certainly, based on his experience, an old hand at performing
13 annual inspections and returning many different types of
14 aircraft, including this aircraft, to service. I am inclined
15 to believe Respondent and his testimony regarding corrosion.
16 To sum it up shortly, when and if he saw corrosion when he was
17 inspecting this aircraft, he would take appropriate action and
18 replace the part affected, as he did with the right flap.

19 The Administrator sent Respondent a letter of
20 investigation following the crash of the aircraft, subsequently
21 thereafter in August of 2008. Administrator's Exhibit A-15,
22 which is Respondent's reply to the letter of investigation,
23 starts off by saying the reply to Inspector Spera. But at any
24 rate, Respondent's reply, and this is on or about September 3,
25 2008:

1 "Dear -- during the course of the annual inspection
2 on N2707V, Beech model 35, it was noted to the owner, meaning,
3 of course, Mr. Heber, that the battery was out of date. The
4 owner ordered a new battery and said he, the owner, would
5 install it when it came in."

6 The remaining segments of the Respondent's letter
7 talks about the competency of the owner in dealing with
8 aircraft, as I have previously alluded to, that he assisted the
9 Respondent in performing many of these annual inspections in
10 the past.

11 The last paragraph of the letter, Exhibit A-15, says,
12 the aircraft was jacked up and the gear cycled several times
13 and at the time it seemed to work normally and responded
14 properly.

15 MR. WINTON: Excuse me, Your Honor? I will be right
16 back. Please continue.

17 JUDGE FOWLER: Well, I'll wait until you come back.

18 MR. WINTON: Thank you.

19 (Off the record)

20 (On the record)

21 MR. WINTON: Thank you.

22 JUDGE FOWLER: Very well. We're on the record.

23 Mentioning again, during testimony of Respondent
24 Hayes, I mentioned his lengthy previous experience in
25 performing annual inspections, that he would have removed any

1 part that he saw that had corrosion. That was his testimony.
2 He would remove the part and replace it, just as he did the
3 right flap.

4 Respondent Hayes' testimony where the emergency
5 locator transmitter battery was concerned, he said he tested
6 the battery, two tests, including the impact test and, to use
7 Respondent Hayes' language and terminology, after the testing,
8 he replaced the old battery because of remaining life in the
9 old battery, despite the expiration date, which was over three
10 years old.

11 Now, ladies and gentlemen, as counsel for the
12 Administrator said, what did Respondent Hayes mean when he said
13 he replaced the old battery? We all would commonly think that
14 if you replace the battery, he replaced it with a new battery.
15 Respondent Hayes' testimony was very notable and to the point,
16 and coalesced very well with the third witness on behalf of the
17 Respondent, Inspector Carmine J. Colaluca, who was designated
18 as a general maintenance expert, as chief inspector for an
19 aviation firm, has signed-off on over 1,000 annual inspections.

20 Inspector Colaluca contacted personally
21 Respondent Hayes, in regard to this proceeding, when it was
22 pending. Inspector Colaluca's testimony was quite
23 enlightening, at least that is my determination and opinion.

24 Inspector Colaluca said unequivocally based on his
25 review of the totality of the investigation by the FAA, the

1 proceedings that we've had here yesterday and today, that he
2 found no false or fraudulent statement by Respondent concerning
3 the annual inspection and particularly dealing with the battery
4 and the emergency locator transmitter. He did say several
5 times that the words that the Respondent Hayes used, which the
6 Administrator quotes in paragraph of the Emergency Order, that
7 Respondent removed and replaced the aircraft's emergency
8 locator transmitter battery.

9 Inspector Colaluca said "this was a poor choice of
10 words, but it was terminology that had been and still is
11 commonly used in the aviation realm during the past 20 or 25
12 years." It's interesting to note, in passing, this aircraft in
13 its origin, which was 30 years ago, did not require an ELT
14 battery. It's also interesting to note that came out during
15 the course of this proceeding, in specific occasions, this
16 aircraft can be flown without this type of battery. I think
17 the limitation was something concerning no more than 50 miles.
18 I mention that in passing.

19 Inspector Colaluca said that according to the FAA
20 rules and regulations, "no specific language is required when
21 returning the aircraft to service where the ELT battery is
22 concerned." Counsel for the Administrator asked during the
23 course of his final argument why did the Respondent write down
24 what he did about the replacement of this battery, as if this
25 in and of itself constituted a false statement, a statement

1 that was material. It was irrelevant, that the FAA relied upon
2 to the FAA's detriment and which brought about this proceeding
3 that we've had here for the last two days, January 12th and
4 13th, 2009.

5 Now we know, and I have no reason to disbelieve,
6 evaluating the testimony of the Respondent based upon his past
7 history, knowledge and experience, that he said that he
8 depended on the owner of this aircraft during the course of his
9 annual inspection, that the owner of the aircraft, Jack Heber,
10 said he would install a new battery in the aircraft. A space
11 was left by Respondent Hayes for the date of the installation
12 of the new battery, so that when it was installed, when the new
13 battery was installed, that date would be written there in the
14 log of the aircraft.

15 Now we know, unfortunately, as Witness Heber
16 testified, as he put it, he forgot and did not install the new
17 battery. So when the FAA inspectors inspected this aircraft in
18 August of 2008, as I've said earlier, a red flag went up
19 concerning the expiration date of over three years of this
20 battery. That's why we're here, ladies and gentlemen.

21 I had mentioned earlier, the corrosion that the FAA
22 said constituted a sufficient basis to question, if not the
23 date, the validity of the Respondent's annual inspection and
24 returning the aircraft to service. Inspector Mancuso testified
25 and sought additional expertise pertaining to the corrosion on

1 the aircraft as was found as of August 2008, that the aircraft
2 should not have been returned to service if that amount of
3 corrosion was present December 2, 2007, the time of the annual
4 inspection performed by the Respondent.

5 Following the letter of investigation and the
6 Emergency Order of Revocation issued against Respondent Hayes,
7 there was no contact by the FAA inspectors who had inspected
8 the aircraft after the crash. Nor was there any contact other
9 than the letter of investigation sent to the Respondent
10 pertaining to and following the inspection by the FAA of the
11 aircraft after the crash due to a collapsed landing gear.

12 Based upon my review of the totality of the testimony
13 and the evidence, coupled with the innumerable documentary
14 exhibits submitted. It is my conclusion and also determination
15 that, as I alluded to earlier, we're here, here in this
16 proceeding, and it has well been brought out, we're here
17 because of the alleged falsification and/or fraudulent
18 statements by Respondent Hayes following the conclusion of his
19 annual inspection of this aircraft, as I keep saying, on
20 December 2nd, 2007, returning the aircraft to service according
21 to the FAA, it was therefore and thereby, because of the
22 expiration date on the battery, over three years, that
23 Mr. Hayes had made a false statement when he said that he had
24 removed and replaced the battery.

25 Every one of us in this courtroom, except those who

1 happen to be fortunate enough to be experienced in the aviation
2 realm and in aviation matters, as Inspector Colaluca is, and
3 said they were misled by this term of replacement. It is my
4 determination this isn't what Respondent Hayes met at all.
5 What he really meant was that he removed the battery and then
6 he reinstalled the battery in the aircraft.

7 Unfortunately, there was insufficient contact by the
8 Administrator and his inspectors to ascertain, before they
9 brought this action, what the Respondent really meant when he
10 said he replaced the battery. What he really meant, as I said
11 a moment ago, was that he reinstalled the old battery. I've
12 said why he did this.

13 Respondent testified he had checked the battery,
14 given it two tests. The battery still had life. The owner was
15 there at the time. Told him, Respondent Hayes, that he, the
16 owner, was going to get a new battery and install it. This was
17 the situation.

18 So ladies and gentlemen, what we really have here, is
19 a failure to communicate between the FAA and Respondent Hayes,
20 poor choice of words by Respondent Hayes? Yes, as Inspector
21 Colaluca testified to several times during his testimony, but
22 the words are still being used. I asked Inspector Colaluca
23 what, if anything, is the FAA doing, particularly, the FAA
24 hierarchy; what is, if he knows, if Inspector Colaluca knows,
25 the FAA is doing to try and correct this situation so that an

1 extremely experienced, knowledgeable and qualified airframe
2 mechanic with powerplant authority and inspection authorization
3 is not erroneously charged as Respondent Hayes was.

4 I'm sure, ladies and gentlemen, you get the drift of
5 my ultimate determination by this time. There was no
6 fraudulent or false intention here on the part of
7 Respondent Hayes regarding this ELT battery. Reinstall the
8 battery? Yes. Replace the battery as we understand the term
9 commonly known by most laymen what replacement means? No. He
10 didn't replace the battery. He reinstalled the old battery.
11 This case, if I may take the liberty, with better
12 communication, should never have been brought.

13 So then, ladies and gentlemen, based on my total
14 review of all the evidence, testimony and exhibits, I will now
15 proceed to make the following specific findings of fact and
16 conclusions of law:

17 1. The Respondent, Robert Joseph Hayes admits and it
18 is found that he was and is the holder of airframe powerplant
19 mechanic certificate number (omitted);

20 2. Respondent admits and it is found that he was and
21 is the holder of inspection authorization certificate number
22 the same as the powerplant certificate number, (omitted);

23 3. The Respondent admits and it is found the
24 Respondent was and is the holder of commercial pilot
25 certificate number, same number as his inspection authorization

1 certificate and his powerplant mechanic certificate;

2 4. It is found that on or about December 2, 2007,
3 the Respondent, Respondent Joseph Hayes, performed an annual
4 inspection, hereinafter referred to as the annual inspection,
5 on a Beech 35 aircraft, identification number N2707V;

6 5. It is found that concerning the annual
7 inspection, Respondent made an entry in the aircraft's
8 maintenance records indicating that he had removed and replaced
9 the aircraft emergency locator transmitter battery;

10 6. It is found that, notwithstanding the above, that
11 during the annual inspection the Respondent did remove and did
12 reinstall the old aircraft's ELT battery that had the
13 expiration notice thereupon, that it had expired in excess of
14 three years ago;

15 7. It is found that by reason of the foregoing,
16 Respondent did not make a fraudulent or intentionally false
17 entry in the aircraft's maintenance records. It's commonly
18 known, and as I previously alluded to, the Respondent
19 reinstalled the old expired battery and at the time told the
20 owner/operator, Mr. Jack Heber, what he was doing, why he was
21 doing it, and the owner/operator concurred with this, the
22 owner/operator stating at the time, as he's testified, that he,
23 Mr. Heber, the owner would purchase a new battery and have it
24 installed;

25 8. It is found that following the conclusion of the

1 annual inspection, the Respondent determined the aircraft to be
2 in an airworthy condition, notwithstanding that -- and I'm
3 incorporating by reference paragraph 8 of the Administrator's
4 Emergency Order of Revocation and the paragraph (a), (b), (c)
5 and (d) of that paragraph. I'm incorporating those by
6 reference in my decision;

7 9. It is found by virtue of the foregoing,
8 Respondent Hayes did not fail to perform the annual inspection
9 so as to determine whether the aircraft or portions thereunder
10 inspection met all applicable airworthiness requirements;

11 10. It is found that by virtue of the foregoing, the
12 Respondent did not fail to use the methods, techniques and
13 practices prescribed in the current manufacturer's maintenance
14 manual or instructions for continued airworthiness prepared by
15 its manufacturer, or other methods, techniques and practices
16 acceptable to the Administrator concerning the maintenance
17 Respondent performed on the aircraft during the annual
18 inspection of December 2, 2007;

19 11. It is found that by virtue of the foregoing,
20 Respondent did not fail to perform the annual inspection in
21 such a manner, using materials of such a quality as the
22 condition of the aircraft airframe, aircraft engine, propeller
23 or appliance worked on was at least equal to its original or
24 properly altered condition;

25 12. It is found the Respondent did not violate the

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3 EDITED & DATED ON

4 FEBRUARY 3, 2009

WILLIAM E. FOWLER, JR.

Chief Administrative Law Judge.