

SERVED: December 4, 2009

NTSB Order No. EA-5492

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 3rd day of December, 2009

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J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18709
v.)	
)	
CARLOS A. ALVAREZ,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

The Administrator appeals the oral initial decision of Chief Administrative Law Judge William E. Fowler, Jr., issued on November 5, 2009.¹ In the initial decision, the law judge granted respondent's appeal of the Administrator's emergency

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

revocation order,² which the Administrator based on FAA authority codified at 49 U.S.C. § 44709,³ and respondent's alleged violation of 14 C.F.R. § 65.20(a)(1).⁴ Based on his finding that respondent did not violate § 65.20(a)(1), the law judge dismissed one count of the Administrator's complaint. With regard to the other count, the law judge found that respondent had not successfully completed a reexamination test for renewal of his airframe and powerplant (with inspection authorization (IA)) mechanic certificate, but reduced the Administrator's sanction from revocation to suspension, pending successful completion of the test. We deny the Administrator's appeal.

The Administrator issued the emergency revocation order, which became the complaint in this case, on October 2, 2009. The order revoked respondent's private pilot, flight engineer, and mechanic certificates. Count I of the order alleged that

² This case proceeds pursuant to the Administrator's authority to issue immediately effective orders under 49 U.S.C. §§ 44709(e) and 46105(c), and in accordance with the Board's Rules of Practice governing emergency proceedings, codified at 49 C.F.R. §§ 821.52–821.57.

³ Section 44709 provides that the Administrator may issue an order amending, modifying, suspending, or revoking any part of a certificate if the Administrator decides, after conducting a reinspection, reexamination, or other investigation, that safety in air commerce or air transportation and the public interest requires that action.

⁴ Section 65.20(a)(1) prohibits a person from making or causing to be made, "[a]ny fraudulent or intentionally false statement on any application for a certificate or rating under this part."

respondent failed a reexamination for his mechanic certificate, and that, following the failure, did not place his certificate on deposit with his Flight Standards District Office (FSDO) while he scheduled another test. Count II of the order alleged that respondent falsified FAA Form 8160-2.⁵ The question at issue on the form asks, "Have you ever had an airman certificate suspended or revoked?" in response to which respondent checked, "no."

The law judge ordered a hearing, at which the Administrator called Debra Shields, who works in the FAA's Eastern Region FSDO as a secretary. With regard to Count I, Ms. Shields stated that she observed Aviation Safety Inspector Ralph Carr tell respondent that he had failed the reexamination under 49 U.S.C. § 44709, which was a written aviation mechanic test consisting of 100 questions categorized as "General, Airframe, & Powerplant." Exh. A-3. Ms. Shields testified that respondent did not seem surprised that he had not successfully passed the test. Ms. Shields stated that respondent did not contact the FSDO to reschedule after failing the test.

The Administrator also called Inspector Carr, who stated, with regard to the examination, that respondent completed the

⁵ Form 8160-2 is the FAA Airman Certificate and/or Rating Application. The application at issue is that which respondent completed and signed on July 22, 2009, for his mechanic certificate. Exh. A-2.

test before the 2-hour testing period was over, and that Inspector Carr graded the test immediately, and determined that respondent had answered 41 questions incorrectly, out of 100 total questions. Inspector Carr described respondent's attitude as "nonchalant" regarding his failure to pass the test. Tr. at 51. Inspector Carr testified that he informed respondent that he had 10 days to take a retest, to which respondent stated that he would contact his lawyer. Inspector Carr stated that he gave a letter to respondent concerning the procedure for taking a retest.

With regard to the issue of whether respondent falsified his July 22, 2009 application for a mechanic certificate, Inspector Carr identified the application, on which the question at issue asks, "have you ever had an airman certificate suspended or revoked?" Exh. A-2 at 1; Tr. at 44. Inspector Carr compared this question to the question on the mechanic application that one must complete when applying for an inspection authorization, and stated that, on the mechanic application, the form asks if the applicant's mechanic certificate and/or ratings have been suspended or revoked within the preceding 3 years. Exh. A-9 at 36; Tr. at 34. Inspector Carr identified a notice of proposed certificate action that the Administrator issued on January 11, 2007, in which the Administrator charged respondent with failing to report a 2003

driving under the influence (DUI) of alcohol conviction in Florida, and sought revocation of respondent's second-class airman medical certificate, and suspension of respondent's private pilot, flight engineer, and mechanic certificates for a period of 60 days. Exh. A-9 at 37-39. Inspector Carr subsequently identified the portion of respondent's July 22, 2009 application in which respondent answered "no" to the question of whether respondent "ever had an airman certificate suspended or revoked." Exh. A-2 at 1.

In response to the Administrator's case, respondent testified on his own behalf. Respondent acknowledged that his private pilot, flight engineer, and medical certificates had been suspended in 2007, because, in 2003, he was convicted of DUI and did not report the conviction on his medical certificate application. Respondent testified that he checked "no" on the July 22, 2009 application in response to the question of whether his airman certificate had been suspended or revoked because he assumed that the question only applied to mechanic certificates. Tr. at 96. Respondent compared the July 22, 2009 application to the March 25, 2009 application for renewal of his IA, and stated that, with regard to that IA renewal application, he visited the Fort Lauderdale FSDO and gave his application to an inspector, who told him that he should check "no" in response to the question of whether his "mechanic certificate and/or ratings

[had] been revoked or suspended during the 3-year period preceding [the] application." Exh. A-9 at 36. Respondent testified that he did not know the inspector's name, but only had his signature on the March 2009 application. Tr. at 98; Exh. A-9 at 36.

With regard to the reexamination, respondent stated that he was required to take a reexamination under 49 U.S.C. § 44709 after he erred in checking the altimeter and transponder on an aircraft he had inspected. Respondent acknowledged that he did not satisfactorily complete the test, and stated that he had not prepared for it. Respondent testified that Inspector Carr handed him a letter after the test, but that he received nothing from the FAA after that letter, and was waiting for correspondence from the FAA before scheduling a retest. Respondent stated that he is willing to take the test again, but acknowledged that he did not leave his certificate on deposit at the FSDO while awaiting a chance to take a retest.⁶

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he stated that he was giving respondent "the benefit of the doubt" with regard to

⁶ The FAA Sanction Guidance Table, at Ch. 5, ¶ 6, § (d)(3), requires the deposit of the certificate with the FAA when an applicant fails a written reexamination, while the applicant prepares to take a second written reexamination. Exh. A-10. The evidence in the record does not establish whether respondent received notice that he was required to deposit his certificate immediately.

respondent's understanding that he would receive correspondence from the FSDO to schedule a retest. Initial Decision at 151. With regard to the Administrator's allegation that respondent falsified his airman certificate application, the law judge determined that respondent did not falsify the application because he had no knowledge of falsity; the law judge stated that respondent believed the July 22, 2009 application asked whether his mechanic certificate had been suspended or revoked, and trusted the inspector at the Fort Lauderdale FSDO who advised him to answer "no" on the March 25, 2009 application, which asked a similar question. Based on these findings, the law judge reduced the sanction to a suspension pending respondent's successful completion of the retest. Id. at 156.

On appeal, the Administrator contends that the law judge erred in reducing the sanction to a suspension, pending respondent's successful completion of a reexamination. In the appeal brief, the Administrator's counsel emphasizes the fact that respondent did not place his certificate on deposit with the FAA, which would allow him to schedule a retest. The brief also includes the assertion that our precedent requires revocation when an airman submits to a reexamination and fails. The Administrator argues that respondent's willingness to complete a retest is irrelevant, because respondent failed to surrender his certificate and arrange for a retest; therefore,

the Administrator asserts, the law judge erred because he "ignored the fact that the opportunity to retest after a failed reexamination is predicated upon the airman's act of depositing his certificate with the FAA." Appeal Br. at 9.

The Administrator also alleges that the law judge erred in finding that respondent did not violate 14 C.F.R. § 65.20 by answering "no" to the question of whether respondent "ever had an airman certificate suspended or revoked." In this regard, the Administrator cites 49 U.S.C. § 40102(a)(8), which defines "airman" as a pilot, mechanic, or crewmember, for the assertion that respondent should have answered "yes" to the question of whether he ever had an airman certificate suspended or revoked, since this question encompassed all airman certificates, and did not specifically refer to respondent's mechanic certificate. The Administrator's brief states that respondent provided a false answer in 2006, so he is generally not credible. The brief also contends that respondent knew that the reference to "airman certificate" on the application includes certificates for pilots, mechanics, and crewmembers, because respondent has a great deal of experience in completing such applications, and that such falsification is grounds for revocation, in accordance with our case law. Respondent disputes each of the Administrator's arguments, and urges us to affirm the law judge's decision.

Count I: Reexamination

Regarding the sanction for respondent's failed reexamination, we note that, concerning sanction issues in general, the FAA Civil Penalty Administrative Assessment Act (the Act)⁷ states that the Board is bound by written agency guidance available to the public relating to sanctions to be imposed, unless the Board finds that any such interpretation or case sanction guidance is arbitrary, capricious, or otherwise not in accordance with law.⁸ It is the Administrator's burden under the Act to clearly articulate the sanction sought, and to ask the Board to defer to that determination, supporting the request with evidence showing that the sanction has not been selected arbitrarily, capriciously, or contrary to law.⁹

We have previously considered failure on a reexamination to justify revocation of one's certificate. In Administrator v. Montenegro, NTSB Order No. EA-5292 (2007), we reviewed our precedent on this issue and quoted Administrator v. Wollgast, 7 NTSB 1216, 1217 (1991), wherein we stated, "the only relevant question after the [reexamination] test has been given is not

⁷ 49 U.S.C. §§ 44709(d) and 46301(d).

⁸ Administrator v. Hewitt, NTSB Order No. EA-4892 at 2 (2001).

⁹ Administrator v. Peacon, NTSB Order No. EA-4607 at 10 (1997); see also Administrator v. Oliver, NTSB Order No. EA-4505 (1996) (Administrator introduced no evidence regarding applicable or relevant sanction guidance).

whether the Administrator's doubts about the airman's competence were reasonably justified, but, rather, whether his competence was in fact successfully demonstrated." In addition, we have recognized that the Administrator's written sanction guidance provides that, "[g]enerally, if the certificate holder has twice submitted to a reinspection or reexamination, and has twice failed, the certificate should be revoked." Administrator v. Vargas, NTSB Order No. EA-5268 at 4 (2007) (quoting FAA Sanction Guidance Table, FAA Order 2150.3B (Oct. 1, 2007), at Ch. 5, ¶ 6, § (d)(3)).

In the case at hand, respondent does not dispute that he failed to complete the reexamination successfully, and acknowledges that he has not completed a retest. Furthermore, respondent does not contest that he did not leave his certificate on file with the FAA.¹⁰ The Administrator argues that a retest is only available when the certificate holder places his or her certificate on deposit with the FAA, and cites

¹⁰ As stated above, the evidence in the record does not establish whether respondent received notice that he was required to deposit his certificate immediately. The letter that respondent received from Inspector Carr informed respondent that he did not successfully complete the reexamination, and that, as a result, the Administrator was pursuing an enforcement action against respondent's certificate. Exh. R-2. The letter did not state that respondent was required to deposit his certificate while preparing for a second reexamination. Respondent testified that, following the test, he returned to Alaska to continue his work in a contract arrangement, and believed the FAA would contact him about scheduling a second reexamination.

the FAA Sanction Guidance Table at Ch. 5, ¶ 6, § (d)(3), which states that, "the opportunity for a second reexamination is allowed when the airman voluntarily places his or her certificate on deposit with the FAA following the first failure while the certificate holder prepares for the second attempt." Exh. A-10. At the hearing, the Administrator's counsel requested deference to the Sanction Guidance Table, and summarized the above-quoted section. Tr. at 138-39. As such, we are compelled to defer to the Administrator's written sanction guidance, which, in this case, leads us to conclude that respondent must deposit his certificate with the FAA. The law judge ordered that respondent do so in this case. Initial Decision at 156 (ordering suspension pending successful reexamination). The Administrator's sanction guidance does not order revocation of respondent's certificate unless respondent has failed two reexaminations. FAA Sanction Guidance Table at Ch. 5, ¶ 6, § (d)(3). Subsection (d) of Ch. 5, ¶ 6 of the Sanction Guidance Table provides that, "[i]f the certificate holder submits to reexamination or reinspection and does not establish qualifications, and does not voluntarily surrender the certificate or rating for cancellation, FAA enforcement personnel follow the procedures in chapter 5, subparagraph 6.d.(1)-(3)." As noted above, § (d)(3) does not specifically provide for revocation of a certificate after one

failed reexamination, but instead requires that the certificate holder deposit the certificate while preparing for a second reexamination. The law judge ordered such deposit, and the Administrator has not established that this direction was contrary to the Sanction Guidance Table. Therefore, we deny the Administrator's appeal with regard to Count I of the complaint.

Count II: Falsification

With regard to the law judge's holding concerning Count II of the complaint, in which the Administrator alleged that respondent falsified his airman certificate application by checking "no" in response to the question of whether his airman certificate had previously been suspended or revoked, we acknowledge that the law judge generally based his ruling on a finding that respondent's testimony was credible. In this regard, the Board will not disturb a law judge's credibility finding unless it is arbitrary, capricious, or clearly erroneous.¹¹ In general, we defer to law judges' credibility assessments, because "[i]t is a well established Board precedent that resolution of a credibility determination, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge who, as the trier of fact, is alone in

¹¹ Administrator v. Smith, 5 NTSB 1560, 1563 (1986).

a position to observe and assess the demeanor of the witnesses.”
Administrator v. Jones, 3 NTSB 3649, 3651 (1981).

Furthermore, in cases in which the Administrator has alleged that an airman or applicant falsified a record, we have consistently applied the three-prong standard set forth in Hart v. McLucas, 535 F.2d 516 (9th Cir. 1976), which requires that the Administrator prove that: (1) falsification occurred, (2) in reference to a material fact, and (3) respondent had knowledge of the falsity of the erroneous fact.¹² 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.¹³ Moreover, with regard to the third prong of the Hart v. McLucas test, we have concluded that the Administrator need not show that a respondent had a *specific intent* to falsify a record, but that a respondent’s cognizance of falsity with regard to a material fact in a record will suffice to prove that the respondent had knowledge of the falsity of the erroneous fact.¹⁴ In Dillmon, we

¹² Id. at 519 (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

¹³ 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 (9th Cir. 1991).

¹⁴ Administrator v. Dillmon, NTSB Order No. EA-5413 at 10–11 (2008) (citing McGonegal, supra note 13, at 9; Administrator v.

stated that the Administrator may fulfill this prong in falsification cases by providing evidence to show that the respondent made the incorrect answers while aware that the answers were not correct. Dillmon, supra note 14, at 10.

In this case, we believe the Administrator has not shown that the law judge's credibility assessment was arbitrary, capricious, or clearly erroneous. The law judge concluded that respondent's testimony was credible with regard to his assertion that a FSDO inspector instructed respondent to mark "no" in response to the question at issue. The Administrator did not deny that an inspector in the Fort Lauderdale FSDO may have instructed respondent that the question only referred to respondent's mechanic certificate, nor did the Administrator provide evidence that the inspector did not or would not do so. While we are very cognizant of the Board's precedent regarding the plain meaning of questions on the FAA Airman Certificate and/or Rating Application and other application forms, this case presents a unique fact pattern, and we accordingly decline to intrude into the province of the law judge. We therefore agree that the Administrator did not fulfill his burden of proof on

(..continued)

Exousia, Inc. and Schweitzer, NTSB Order No. EA-5319 at 8 n.10 (2007); Administrator v. Brassington, NTSB Order No. EA-5180 at 10 (2005)). We have also considered a prior history of falsification noteworthy when assessing whether a respondent has falsified a record. See generally Administrator v. Manin, NTSB Order No. EA-5439 at 3, 9-10 (2009).

this issue, and the Administrator has not provided reason for us to overturn the law judge's credibility determination.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied;
2. The law judge's decision is affirmed; and
3. Respondent's mechanic certificate is suspended, until such time as he successfully completes a reexamination test.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, Member of the Board, concurred in the above opinion and order.

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

* * * * *
In the matter of: *
*
J. RANDOLPH BABBITT, *
ADMINISTRATOR, *
Federal Aviation Administration, *
*
Complainant, *
v. *
CARLOS ALBERTO ALVAREZ, *
*
Respondent. *
* * * * *

Docket No.: SE-18709
JUDGE FOWLER

Charlotte-Mecklenburg Government Center
600 East Fourth Street, 2nd Floor
Charlotte, North Carolina

Thursday,
November 5, 2009

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:

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ORAL INITIAL DECISION AND ORDER

This has been a proceeding before the National Transportation Safety Board held pursuant to the provisions of the Federal Aviation Act of 1958 as that Act was subsequently amended on the appeal of Carlos Alberto Alvarez from an Emergency Order of Revocation dated October 2, 2009, which purports to revoke Respondent Alvarez's airman pilot certificate, flight engineer certificate and airman mechanic certificate with inspection authorization.

The Administrator's Emergency Order of Revocation as duly promulgated pursuant to the National Transportation Safety Board's Rules of Practice was issued by the Regional Counsel, Southwest Region of the Federal Aviation Administration. This matter has been heard before this United States Administrative Law Judge, and as is provided by the Board's Rules of Practice, it is mandatory as the judge in this proceeding that I issue an Oral Initial Decision and Order following the conclusion of this proceeding, which I'm going to do at this time.

Following notice to the parties, this matter came on for trial on November 5th, 2009. The Respondent, Carlos

1 Alberto Alvarez, was present at all times and was very ably
2 represented by Michael O. Moulis, Esquire; the complainant
3 in this proceeding, the Regional Counsel's office of the
4 Southwest Region of the Federal Aviation Administration,
5 was likewise very ably represented by Stellamaris Williams,
6 Esq. Both parties have been afforded the opportunity to
7 offer evidence, to call, examine and cross-examine
8 witnesses in behalf of their respective cases. In
9 addition, the parties were afforded the opportunity to make
10 final argument in support of their respective positions.

11 I have reviewed the testimony and the exhibits
12 introduced in this proceeding. The Administrator had in
13 the neighborhood of ten exhibits. The Respondent had two.
14 The Administrator had two witnesses. The Respondent had
15 one, the Respondent himself. The Respondent in this
16 proceeding, Respondent Alvarez, is a very experienced
17 pilot, flight engineer and mechanic with an inspection
18 authorization over a period of time, exceeding 20 years.

19 There were two counts in the Administrator's
20 Emergency Order of Revocation, Count I dealing with the
21 reexamination that the Respondent submitted to on July
22 22nd, 2009, and Count II charging with pertinent and
23 relevant allegations about an alleged fraudulent or false
24 statement made by the Respondent. Mrs. Debra Shields and
25 Inspector Carr Ralph Carr -- Inspector Carr was an aviation

1 safety inspector, and Mrs. Shields was at the time of this
2 reexamination secretary/receptionist for the FAA, although
3 she has many years of extensive mechanic training. As FAA
4 witnesses they both testified voluminously and in depth as
5 to what occurred on July 22nd, 2009, when Respondent
6 Alvarez submitted himself for the examination to hold an
7 airman mechanic certificate. Unfortunately, the results
8 were unsatisfactory. Inspector Carr testified copiously in
9 this regard and his testimony, which was heard or overheard
10 I should say by Mrs. Shields, solidly substantiated the
11 fact that after the unsatisfactory results of the
12 examination, Respondent Alvarez was conversed with and told
13 he could retake the exam if he would redeposit his
14 certificate. As described in the testimony, Respondent's
15 attitude was bordering on being nonchalant and he told
16 Inspector Carr he would have to consult with his attorney
17 before deciding on a date to retake the examination.

18 Now, as a result -- and let's see here. As set
19 forth in Respondent's Exhibit R-1, Paragraph D reads,
20 airman refusal to submit to reexamination. If an airman
21 fails to submit to a reexamination within a reasonable
22 period of time, excluding unforeseen problems such as
23 weather, mechanical problems, et cetera, or demonstrates an
24 unwillingness to submit to reexamination, emergency
25 enforcement action to suspend the airman's certificate

1 shall be initiated.

2 Based on my review of the totality of the
3 evidence and testimony, coupled with the documentary
4 exhibits, it is my determination, finding and conclusion,
5 that the Respondent, while he delayed resubmitting himself
6 for a reexamination, he had this desire, but business
7 interests coupled with the fact that he had reliance on his
8 counsel to inform him about a new date to resubmit himself
9 for the examination which never occurred, and which
10 ultimately caused us being here in this proceeding today,
11 following the issuance of the Emergency Order of Revocation
12 dated October 2nd, 2009 -- Respondent was exceedingly busy
13 in Alaska and other parts of the country, and never hearing
14 from counsel, he did not apply for the reexamination,
15 which, as I said, has brought about this action that we're
16 involved with here today.

17 It is my inclination based upon the totality of
18 the evidence, taking into account all the pertinent,
19 relevant and salient factors here, to give Respondent
20 Alvarez somewhat the benefit of the doubt where the
21 reexamination is concerned. It's been stated by him and
22 his counsel they were ready, willing, and able to be
23 reexamined up until the present time and also willing to
24 surrender his certificates forthwith, as of this time,
25 today's date, right now at the time of the hearing, and

1 counsel for the Respondent had so indicated.

2 As to Count II of the Administrator's Emergency
3 Order of Revocation, based on my review of the totality of
4 the evidence, Exhibit A-9, Administrator's Exhibit A-9,
5 sets forth Respondent checking off the answer no, has your
6 mechanic certificate ever been suspended and so forth, and
7 in answer to Question 7 Respondent testified, I felt very
8 forthrightly that he was influenced by the inspector in
9 Miami whose signature is on Page 34 and 36 of this exhibit,
10 which nobody can figure out who it is. I can't read his
11 signature. But Respondent testified that the application
12 here was not speaking towards his mechanic certificate, and
13 that is why he had checked no. Ordinarily he wouldn't have
14 checked it that way, but he was influenced and possibly as
15 you look at it now in retrospect unduly by the inspector
16 here on March 25th, 2009. This apparently took place in
17 Miami, Florida. So, making that determination, this answer
18 no to the question have you ever had an airman certificate
19 suspended or revoked, the statute reads, there must be a
20 false answer with knowledge of its falsity by the
21 Respondent at the time he makes the answer. There's no
22 knowledge here, and certainly no fraud in my determination,
23 and with the influence that he was under, it cannot be
24 construed it was intentionally false when he checked off no
25 to the answer about whether his airman certificate had ever

1 been suspended or revoked, because he thought this
2 application applied just to his mechanic certificate. This
3 was a misunderstanding on the part of the Respondent, but a
4 misunderstanding, of course, is not a false or fraudulent
5 intention, and I'm giving him the benefit of the doubt on
6 that and finding a nonviolation where the false statement
7 issue is concerned.

8 So that ladies and gentlemen, without unduly
9 belaboring the facts and illustrations in this case, I will
10 now proceed to make the following specific findings of
11 fact, conclusions of law:

12 Under Count I -- Paragraphs 1, 2, 3, 4, 5 and 6
13 have all been admitted by Respondent through counsel, and
14 I'm incorporating those paragraphs by reference
15 accordingly, to so state.

16 Paragraph 7, it is found that by reason of facts
17 and circumstances set forth above, it appears that
18 Respondent Alvarez lacks the technical proficiency required
19 to hold and exercise a privilege of a mechanic certificate
20 with airframe and powerplants ratings. Under U.S.C.
21 Section 44709, it provides that the Administrator may issue
22 an order amending, modifying, suspending, or revoking any
23 part of the certification issued under this Title 49 U.S.C.
24 Section 44709 after the Administrator has conducted a
25 reinspection or reexamination or other investigation that

1 safety in air commerce or air transportation and the public
2 interest requires that action. The Administrator has that
3 authority.

4 It is my finding and determination and conclusion
5 that a suspension is in order here, a suspension of
6 Respondent's certificates until such time as he reapplies
7 and successfully passes a reexamination for a mechanic
8 certificate.

9 Under II, Respondent admits and it is found by
10 Order of Suspension and Revocation issued, December 11th,
11 2008, the FAA revoked Respondent's airman medical
12 certificate and suspended Respondent's airman pilot
13 certificate and his flight engineer certificate for a
14 period of 60 days.

15 2) It is found and the Respondent admits that on
16 July 22nd, 2009, Respondent Alvarez completed FAA Form
17 8610-2, application for reexamination.

18 3) The Respondent admits and it is found that FAA
19 Form 8610-2 contains the question, have you had an airman
20 certificate suspended or revoked?

21 4) It is found that Respondent checked the block
22 no to the above-described question.

23 5) It is found that based on the totality of the
24 evidence adduced before me during the course of this
25 hearing, Respondent's answer to the above-described

1 question was not intentionally false, even though
2 Respondent's pilot and flight engineer certificates had
3 been suspended and Respondent's medical certificate had
4 been revoked.

5 By reason of the foregoing facts and
6 determinations based on the evidence, testimony and
7 documentary exhibits adduced where Count II is concerned,
8 the Respondent did not violate the following section of the
9 Federal Aviation Regulations: A: Section 65.20(a)(1),
10 which I'm incorporating by reference which makes allusion
11 to the fact of what a false or fraudulent statement is; and
12 B: Section 5 that as a result of the foregoing facts and
13 circumstances as described in Counts I and Count II above,
14 it is found that the Respondent does not lack the
15 qualifications necessary to continue to hold airman
16 certificates. It is determined here that safety in air
17 commerce or air transportation and the public interest does
18 not require the revocation of the above-mentioned airman
19 certificates. A suspension of same is more in order here.

20 6) This Judge finds that safety in air commerce
21 or air transportation and the public interests does not
22 require the affirmation of the Administrator's Emergency
23 Order of Revocation dated October 2, 2009, in view of the
24 nonviolation of Section 65.20(a)(1) as set forth in the
25 Administrator's Emergency Order of Revocation.

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ORDER

IT IS ORDERED AND DECREED that the Administrator's Emergency Order of Revocation is modified to a period of suspension until such time as the Respondent resubmits and retakes his mechanic certificate examination.

The Respondent has 60 days from today's date of November 5, 2009, to resubmit and take the examination for a mechanic certificate.

WILLIAM E. FOWLER, JR.
U.S. Administrative Law Judge