SERVED: June 30, 2010

NTSB Order No. EA-5528

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 30th day of June, 2010

J. RANDOLPH BABBITT, Administrator, Federal Aviation Administration, Complainant, v. JACK RONDAL DILLMON, Respondent.	)	Docket SE-18349RM

OPINION AND ORDER

On remand from the United States Court of Appeals for the District of Columbia Circuit,[1] we revisit respondent's appeal of

[1] Dillmon v. NTSB, 588 F.3d 1085 (2009). Although respondent named the National Transportation Safety Board (NTSB) as a respondent in his petition for review before the Court of Appeals, the NTSB performed a quasi-judicial function in that it adjudicated respondent's appeal from the Administrator's order of suspension. The Federal Aviation Administration is the party in interest, not the NTSB, which does not typically participate

the oral initial decision of Chief Administrative Law Judge William E. Fowler, Jr., in which the law judge granted respondent's appeal of the Administrator's emergency revocation order.[2] The Administrator based the order on respondent's alleged intentional falsification of three applications for his airman medical certificate.[3] We originally granted the Administrator's appeal and reversed the law judge's initial decision on the basis that the evidence provided in the hearing below proved that respondent had intentionally falsified the applications at issue.

The emergency order of revocation, which became the complaint in this case, alleged that respondent submitted three applications for an airman medical certificate (in 1997, 2007, and 2008), on which he certified that all the information he provided on each of the applications was complete and true. The Administrator's order stated that, as a result of this certification, the Administrator issued respondent an airman medical certificate, as well as an Authorization for Special

(..continued)
in the judicial review of its decisions. See 49 C.F.R. § 821.64(a).

[2] A copy of the initial decision, an excerpt from the hearing transcript, is attached.

[3] 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.

Issuance of a Medical Certificate. The order further specifically alleged that, in response to question 18w on the applications, respondent certified that he had "no history of nontraffic conviction(s) (misdemeanors or felonies)." Compl. at ¶¶ 3, 7, 11. The Administrator's order then stated that respondent's responses to question 18w were intentionally false, because respondent knew at the time he completed the applications at issue that, on February 26, 1997, he had been convicted of five counts of bribery, a Class C felony, in violation of Tennessee law. Id. at ¶¶ 4, 8, 12. The order alleged that respondent had violated 14 C.F.R. § 67.403(a)(1), and ordered revocation of respondent's certificates.

The case proceeded to a hearing before the law judge, at which the Administrator provided a certified copy of the judgment in the criminal/circuit court of Davidson County, Tennessee, indicating that respondent had been convicted of bribery offenses that occurred four times in 1991, five times in 1992, and one time in 1994. Exh. A-1.[4] The Administrator also provided a certified copy of respondent's airman medical record, which contained the medical applications at issue. Exh. A-2. Finally, the Administrator provided a copy of the instructions that accompany FAA Form 8500-8, which is the medical certificate

[4] Although the Administrator's complaint stated that respondent had been convicted of five counts of bribery, respondent admitted at the hearing that he had been convicted of 10 counts.

application. Exh. A-3.

Respondent's counsel stipulated at the hearing to the fact that respondent had been convicted as proved by the Administrator, and that respondent's answer to question 18w on the medical applications at issue had been false.[5] Respondent's counsel stated, however, that respondent believed that he only needed to report a conviction if it related to a medical condition, and that respondent did not have an intent to deceive the Administrator. Tr. at 37—38. In support of these arguments, respondent provided his own testimony, in which he confirmed that he was convicted of 10 counts of bribery, and that, after a 6-week trial, he unsuccessfully appealed the conviction. Tr. at 43. Respondent stated that he "by no means [disputed] the conviction." Tr. at 47.

Respondent stated that he checked "no" in response to question 18w after he spoke with the medical examiner for the two most recent applications because the medical examiner purportedly informed him that the FAA was only interested in convictions involving drugs or alcohol. Tr. at 52. Respondent presented two separate letters from the medical examiner, Dr. Christian J. Van Den Berg, in which Dr. Van Den Berg

[5] During respondent's opening statement, his attorney stated, "Is it false? Yeah, it's false. He had a conviction and didn't tell them. Did he knowingly make a false statement? No." Tr. at 38.

initially wrote that he advised respondent that, with regard to question 18v (as opposed to 18w) on the medical application, "the FAA was only interested in events drug or alcohol related." Exh. R-1.[6] In a second, somewhat contradictory follow-up letter, Dr. Van Den Berg clarified that he did not recall a specific discussion with respondent regarding questions 18v or 18w,[7] but that if respondent had asked him about question 18v, Dr. Van Den Berg would have stated that it only relates to drug or alcohol offenses. Exh. R-2. Dr. Van Den Berg's letter hypothesized that, "[i]t is quite possible that he generalized my comment to both 18v and 18w," and that, "a no answer to 18w may have been

[6] Questions 18v and 18w are both categorized under the heading entitled "Conviction and/or Administrative Action History." Question 18v requests a yes or no answer to the following:

> History of (1) any conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any conviction(s) or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an educational or a rehabilitation program.

[7] As stated above, question 18w is listed under the heading entitled "Conviction and/or Administrative Action History." Alongside the heading on the application is the statement "See Instructions Page." Question 18w requests a yes or no answer to the following: "History of nontraffic conviction(s) (misdemeanors or felonies)." The instructions that accompany the application state as follows: "Letter (w) … asks if you have ever had any other (nontraffic) convictions (e.g., assault, battery, public intoxication, robbery, etc.). If so, name the charge for which you were convicted and the date of conviction in the EXPLANATIONS box." Exh. A-3; Tr. at 80.

based upon a misunderstanding created by our discussion." Id. Respondent also testified that he had discussed question 18w with another medical examiner in 1990, but did not state what the medical examiner had told him during that discussion.[8] With regard to the 1997 bribery conviction, respondent testified that he had no clear recollection of correspondence with the medical examiner on whether he should report the bribery conviction, which occurred 1 month prior to his completion of the 1997 medical application. Tr. at 86. Respondent also testified that he knew he had been convicted of the non-traffic offenses when he completed his 1997, 2007, and 2008 applications. Tr. at 86–87. Respondent further testified that, if he completed the application today, he would answer "yes" to question 18w. Tr. at 88. At the conclusion of respondent's testimony, respondent's counsel offered several exhibits into evidence in support of his argument that question 18w was ambiguous or confusing. The law judge admitted these exhibits over the Administrator's objections concerning relevancy. Tr. at 103,

[8] Respondent testified that he had a discussion 7 years prior to his bribery conviction regarding another incident. Respondent stated that he had shot a dog and that, "there were some potential charges that were going to be possible there." Tr. at 76. Respondent continued, "if it was something that I needed to report on my medical about this potential situation, I wanted to make sure that I had disclosed it to the FAA in 1990." Tr. at 77. The record does not contain any evidence concerning what the medical examiner advised respondent in response to his questions about the 1990 incident.

105, 107, 111—14.

The law judge issued an oral decision at the conclusion of the hearing, in which he determined that respondent successfully rebutted the Administrator's prima facie case. In particular, the law judge determined that the Administrator did not establish that respondent specifically intended to falsify the applications in question. Initial Decision at 133. The law judge stated that the issue critical to this case was respondent's intent when completing the applications. Id. at 130 (stating that a necessary element that the Administrator failed to prove was, "what is in [respondent's] mind"). The law judge stated that respondent "did not use the best judgment when he filled out these applications and when he answered … question 18w," but that respondent was likely confused by his most recent discussion with Dr. Van Den Berg, and in a hurry when he completed the applications. Id. at 131. The law judge then concluded that the Administrator failed to prove that respondent intentionally falsified the applications at issue. Id. at 133.

In response to the Administrator's appeal, we reversed the law judge's decision. We recognized that the Administrator must prove three elements to show that a respondent has intentionally falsified an application: (1) a false representation, (2) in reference to a material fact, and (3) made with knowledge of its

falsity.[9] With regard to the third prong, we determined that the evidence the Administrator submitted sufficed to prove that respondent was *aware of the falsity* of his answer to question 18w when he completed the applications, and that such knowledge fulfilled the intent element. We based this analysis on previous cases in which we held that the Administrator need not establish that a respondent had the *specific intent* to falsify a record or deceive the Administrator, but instead that the Administrator may prove a falsification charge if he can show that a respondent was *cognizant of the falsity* of the statement that he or she provided on a record. We cited Administrator v. McGonegal, NTSB Order No. EA-5224 at 4 (2006), and Administrator v. Reynolds, NTSB Order No. EA-5135 at 7 (2005), for the proposition that the Administrator need not establish such intent, but must provide evidence showing that the respondent made the incorrect answers while cognizant of their falsity. McGonegal, supra, at 9.[10] For this reason, we did not address

[9] Hart v. McLucas, 535 F.2d 516 (9th Cir. 1976) (quoting, in part, Pence v. United States, 316 U.S. 332, 338 (1942)).

[10] We quoted McGonegal for the notion that, "the legal standard for intentional falsification does not require any showing that a respondent intended to falsify or to deceive." Id. We also stated that our review of this standard in other cases concerning intentional falsification charges is consistent with this interpretation. See, e.g., Administrator v. 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).

the law judge's finding that respondent's testimony that he misunderstood the question was credible; we found that the evidence that the Administrator submitted, combined with respondent's admissions concerning his knowledge of his bribery convictions when he completed the applications, sufficed to prove the three requisite elements of falsification.

The D.C. Circuit disagreed with our application of the McGonegal standard in this case. In particular, the Court stated that we overlooked a step in our reasoning:

> Dillmon's statement establishes he was aware when he answered Question 18w that he had been convicted of felony bribery. Standing alone, however, this does not establish he knew his answer to Question 18w was false. Although Dillmon freely admitted he knew about the conviction, he also testified he understood Question 18w only required him to report drug- and alcohol-related convictions.

588 F.3d at 1093. The court determined that a respondent's subjective understanding of a question on the application can be relevant to the offense of intentional falsification. Stated simply, such a subjective understanding could influence a respondent's knowledge or cognizance of the falsity of his or her response. This factor, combined with the law judge's finding that respondent's testimony at the hearing concerning his understanding of question 18w was credible, led the court to remand the case to us.

First, we conclude that we are obliged to defer to the law

judge's credibility assessment in this case. We have long deferred to the credibility findings of law judges in the absence of a showing that such findings are arbitrary, capricious, or contrary to the weight of the evidence.[11] Here, although we recognize that the evidence unequivocally establishes that respondent was convicted of bribery and that he was aware of his conviction when he completed the applications at issue, we nevertheless continue to defer to the law judge's credibility determination regarding respondent's testimony at the hearing.

In this regard, the law judge believed that respondent did not understand question 18w, and thus did not intentionally answer it falsely. We recognize that the instructions for the question provide as follows:

> Letter (w) … asks if you have ever had any other (nontraffic) convictions (e.g., assault, battery, public intoxication, robbery, etc.). If so, name the charge for which you were convicted and the date of conviction in the EXPLANATIONS box.

Exhibit A-3 at 2. Although respondent had completed an application for a medical certificate on at least three separate occasions, he testified that he had not read the instructions until the day before the hearing, and the law judge elected to

[11] Administrator v. Nickl, NTSB Order No. EA-5287 at 6 (2007) (citing Administrator v. Kocsis, 4 NTSB 461, 465 n.23 (1982); see also Administrator v. Smith, 5 NTSB 1560, 1563 (1986); Administrator v. Sanders, 4 NTSB 1062 (1983)).

believe him. Notwithstanding the above-quoted instructions for question 18w, respondent stated that he believed, based on his dialogue with Dr. Van Den Berg, that the question only required him to report a conviction that involved an offense related to drugs or alcohol. In reviewing the law judge's credibility finding, even weighed against the clear instructions on the form, we cannot find that the law judge abused his discretion.[12] While we may be inclined to view the evidence differently, we cannot say that the law judge's assessment was arbitrary, capricious, or contrary to the weight of the evidence.

The D.C. Circuit's opinion makes it clear that the Board is required to consider a respondent's subjective understanding of the question at issue when the respondent alleges that he or she misunderstood the question. In this regard, the court determined that our reliance in our original opinion on two of our previous cases concerning the understanding of a question, Administrator v. Boardman, NTSB Order No. EA-4515 (1996), and Administrator v. Sue, NTSB Order No. EA-3877 (1993), was misplaced. The court stated as follows:

> Boardman stands for the proposition that the airman must read the question carefully before answering it … Sue stands for the proposition that the questions on

[12] Respondent's counsel further argued that questions 18v and 18w are unrelated to a medical condition, and, in his view, are inherently confusing in their placement on the application for medical certification.

> the medical application are not inherently too vague to support a finding of intentional falsification.

588 F.3d at 1094–95. Although the court did not overturn or invalidate Boardman and Sue, it concluded that we did not correctly apply the standards of Boardman and Sue in this case. On remand, we do not believe the court's above-quoted statements concerning these cases preclude us in the future from considering whether an airman's defense on this subject is credible, based on the plain language of a question on the application. For example, where an applicant admits that he or she did not read a question carefully, a law judge is still free to reject the applicant's testimony that he or she did not understand the question. Likewise, when an applicant argues that he or she did not understand a question that has a plain, unambiguous meaning, our law judges may still consider such a defense as lacking credibility——especially if the applicant did not seek clarification from a medical examiner or FAA employee—— and determine that the evidence suffices to prove that the airman intentionally falsified his or her response to the question. Therefore, Boardman and Sue continue to have relevance as they relate to a law judge's ability to assess and weigh testimony regarding a respondent's understanding of a question, the meaning of which we have consistently found obvious to a person of ordinary intelligence; they do not stand

for the proposition that a respondent may not raise his or her subjective understanding of a question, or that a law judge may resolve the question, without a factual finding as to whether a respondent's claim of confusion or misunderstanding is credible.

We also note that the court stated that respondent's awareness and recollection of his conviction at the time he completed the application did not suffice to prove that respondent knew that his answer to the question was false. Again, this finding is based on respondent's testimony that he believed the question only required information concerning convictions related to drug or alcohol offenses. Based on the court's reasoning, and the fact that the United States Court of Appeals for the D.C. Circuit has universal jurisdiction in such cases, we acknowledge that, in considering future cases involving § 67.403(a)(1), the Board is required to consider an applicant's subjective understanding of the question at issue. However, we also emphasize that our precedent allows the Administrator to prove an applicant's state of mind by circumstantial evidence.[13] In this regard, we are cognizant of

[13] See generally Administrator v. Aviance Int'l, Inc., NTSB Order No. EA-3805 at 5 (1993) (stating that, "the issue [in falsification cases] is usually whether the individual who made the statement did so intentionally, an element that almost invariably must be established circumstantially, since direct evidence of intent is rarely available."); see also, e.g., Administrator v. Ledbetter, NTSB Order No. EA-5458 (2009); Administrator v. Angstadt, NTSB Order No. EA-5421 (2008), *pet.*

the Administrator's concerns that, in the absence of a respondent who takes the stand and unequivocally testifies that he knowingly lied on an application, it would otherwise be difficult for the Administrator to ever prove that someone violated § 67.403(a)(1). For this reason, we will also consider circumstantial evidence that the Administrator presents concerning a respondent's state of mind.

In this case, the Administrator did not provide sufficient evidence to overcome respondent's defense that he misunderstood question 18w. For example, the Administrator apparently did not seek to interview Dr. Van Den Berg or call him to the stand (or seek telephonic testimony) to question him about anything he may have remembered about his advice to respondent on question 18w. While we note that the two letters from the doctor that respondent submitted into evidence appear to be incongruent, and are far from exculpatory on their face, the Administrator nevertheless failed to test respondent's defense by challenging the merit, authenticity, or persuasiveness of the letters.

As a separate matter, we do not believe that the Administrator is now, under this ruling, unable to pursue a matter in the face of testimony from a respondent who claims subjective confusion about a question on the medical

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(..continued)
for review denied, Angstadt v. FAA, No. 09-1005, 348 Fed.Appx. 589 (D.C. Cir. Sept. 24, 2009) (per curiam).

application. As a prospective consideration, the Administrator may strengthen his cases on alleged § 67.403(a)(1) violations by amending the application process and forms to provide impeccable clarity. The application for a medical certificate asks whether an applicant has been convicted or subjected to any "administrative action(s)." We recognize that the instructions that accompany the application, as quoted above, provide examples of nontraffic convictions that an applicant must report. However, the question on the form itself may be revised to solicit more clearly the information that the Administrator seeks.[14] In addition, the application is one for a *medical* certificate. It may behoove the Administrator to segregate medical- and health-related questions from other questions, perhaps on a separate form. Overall, given the D.C. Circuit's opinion in this case, the Administrator may wish to take this opportunity to review the medical certificate application form carefully, and amend it to avoid an applicant misconstruing a question as respondent claimed to have done in the matter before us. Unless, and until, the Administrator does so, certain cases may very well require a detailed factual determination by the law judge in ascertaining whether a respondent intended to

[14] For example, the Administrator may clarify the application by asking whether an applicant has ever been arrested, and, if so, what the outcome of the arrest was.

answer a question falsely.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and

2. The law judge's decision, reversing and dismissing the Administrator's emergency order of revocation, is affirmed.[15]

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

[15] We note that, after the D.C. Circuit issued their opinion remanding this case to us, respondent submitted a motion to expedite our decision upon remand. That motion is now moot.

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.	*	Docket No.: SE-18349
	*	JUDGE FOWLER
JACK R. DILLMON,	*	
	*	
Respondent.	*	

U.S. Tax Court
Courtroom 1136, 11th Floor
Russell Federal Building & Courthouse
75 Spring Street, SW
Atlanta, Georgia

Thursday,
October 2, 2008

The above-entitled matter came on for hearing, pursuant to notice, at 10:15 a.m.

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

APPEARANCES:

On behalf of the Administrator:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE FOWLER: 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 Jack Rondal Dillmon from an Emergency Order of Revocation issued by the Federal Aviation Administration dated August 27th, 2008.

The Administrator's Emergency Order of Revocation, as duly promulgated, pursuant to the Board's Rules of Practice in Air Safety Proceedings, was issued by the Regional Counsel, Southern Region of the Federal Aviation Administration. This matter has been heard before this United States Administrative Law Judge. As is provided by the Rules of Practice, specifically Section 821.56 of those rules, it is mandatory that, as the judge in this proceeding, I issue an oral initial decision on the record following the conclusion of this proceeding.

Following notice to the parties, this matter came on for trial on October 2nd, 2008. Respondent Jack Rondal Dillmon was present at all times, and was very ably represented by Alan Armstrong, Esquire and Weldon Patterson, Esquire. The Complainant in this proceeding on behalf of the Administrator was likewise very ably represented by Andrea M. Harper, Esquire, of the

Regional Counsel's Office, Southern Region of the Federal Aviation Administration.

I have reviewed the testimony and the documentary exhibits in this case. The Administrator had three exhibits produced on behalf of the Administrator. Respondent had upwards of 17, all of which were duly admitted into the hearing record as presently constituted.

We have a very straightforward, central, paramount, and overriding question to be decided in this case. What was the intention of the Respondent Dillmon regarding the question 18W on the three medical applications when he was filling those applications out?

The Administrator has charged that Respondent intentionally committed a false and fraudulent statement when he answered no to question 18W on those applications. These type cases, in my experience, are very difficult to prove on behalf of the Administrator. What is in the man's mind? That's the issue here we have to decide.

The Administrator says that Respondent Dillmon, in effect, issued a false statement knowing that it was false. He had the requisite intention to falsify as set forth in Section 61.403(1) of the Federal Aviation Regulations.

Respondent's Exhibits 1 and 2, which are revealing, and valid, in my appraisal of this case, letters by Dr. Christian Van Den Berg pertaining to conversations that he had with Respondent

Dillmon.

Respondent's Exhibit 1 is a letter where the doctor said that he advised Mr. Dillmon that the FAA was only interested in events like drugs or alcohol related. This is a simple miscommunication the doctor goes on to say, or an unknowingly incorrect answer.

My opinion is that, as the doctor says, “no punitive actions should be taken.” A few days later, Dr. Van Den Berg wrote a letter to the special agent of the FAA saying “I would have advised him -- it says, I do not recall specific discussion regarding questions 18V or 18W on the medical application.”

“If he had only asked question 18V, I would have advised him that question 18V only relates to alcohol or drug offenses. It is quite possible that he generalized my comment to both 18V and 18W.”

Therefore, a no answer to 18W may have been based upon a misunderstanding created by our discussion. Now, after reviewing the totality of the facts here, it is my opinion and determination that Respondent did not use the best judgment when he filled out these applications and when he answered -- question 18W.

His testimony was that on both of those occasions, the three occasions, he was in a hurry. The last two occasions, or at least the last one, he was confused by the advice of Dr. Van Den Berg. Respondent's testimony is quite to the point, that if he had to answer the question today, he would certainly have answered

18W with a resounding yes. But he was somewhat confused, and made a generalization between questions 18V and 18W as a result of his conversation with Dr. Van Den Berg.

It's true that he was convicted on ten counts of bribery in 1997. He has never hesitated to admit that. My determination is that the Respondent was quite forthright and candid in his testimony. To me, there is quite a notable absence of any indication of an intentional falsehood or interpretation or application when he signed no to these questions in the three applications in question 18W.

As the Respondent testified, “it never entered his mind that flying an airplane in a safe and prudent and reasonable manner had anything to do other than with convictions or offenses related to one's health.” Coupling that with, as I stated earlier, a moment ago, the confusion that he had with the generalization that he took, perhaps I should state it that way, from his conversation with Dr. Van Den Berg that his history of the non-traffic convictions, he thought, applied only to drug and alcohol related offenses or convictions.

After the Administrator had finished its case, you may recall that I denied the directed verdict as well as, the motion to dismiss. I felt then that the Administrator at the very minimum had established a prima facie case.

Am I coming through all right?

COURT REPORTER: Yes, sir.

JUDGE FOWLER: That the Administrator established at a very minimum a prima facie case. However, upon additional reflection and analyzation, Respondent's testimony coupled with the Respondent's documentary exhibits, upwards of 17 exhibits, admitted into the hearing record here, it is clear to me that there's no intention on the part of the Respondent to falsify, let alone be fraudulent in setting forth the answers that he did to this question, 18W.

The Respondent's case and the testimony itself, I think, stresses that this medical application, particularly those questions 18V and 18W, definitely be deemed as somewhat excessively vague and fundamentally ambiguous, and could easily raise the specter that we have here in this proceeding on what would appear to be intentional false statements on the part of the applicant.

It is my judgment that the term "intentionally false" is the overriding, paramount and governing factor in this proceeding. My determination and conclusion is that the Respondent successfully rebutted with the documentary exhibits the Respondent produced, as well as the Respondent's testimony itself, the prima facie case earlier established by the Administrator.

So that ladies and gentlemen, I'm sure you follow the drift of my determination at this time. I will now proceed to make the following specific findings of fact and conclusions of law:

In the Administrator's Emergency Order of Revocation dated August 27th, 2008, the Administrator has, what could be construed as 17 pertinent and salient allegations against the Respondent, which comprise the Administrator's Emergency Order of Revocation. Incorporating, by reference, the following of those numbered paragraphs which are admitted by the Respondent, and are found by this judge; paragraphs one, two, three, five, six, seven, ten, eleven, and thirteen.

Those paragraphs are incorporated by reference from the Administrator's Emergency Order of Revocation having been admitted by the Respondent, and it is my finding they are true. Paragraph four, after reviewing the totality of the testimony and the documentary exhibits, it is found that the answer in the preceding paragraph three was not intentionally false or fraudulent in that on or about February 26th, 1997, in the criminal Circuit Court of Davidson County, Tennessee, Respondent was convicted of five counts of bribery, et cetera, et cetera, et cetera.

Paragraph eight incorporated by reference, the answer on the aforesaid paragraph seven was not intentionally false or fraudulent regarding the February 1997 conviction of bribery of Respondent Dillmon. Paragraph nine, Respondent originally denied, but it is found that the information provided on Respondent Dillmon's May 2nd, 2007 application where Respondent was granted authorization on the special issuance of a medical certificate authorization on October 19, 2007.

Paragraph 12, the answer on the aforesaid paragraph was not intentionally false or fraudulent in that -- and I'm incorporating by reference the rest of that paragraph pertaining to the criminal conviction in February 1997 on the ten counts of bribery as set forth in the Tennessee Code Annotated.

Finding 14, it is found by reason of the foregoing that Respondent Dillmon has not demonstrated that he lacked the qualifications required of the holder of airman certificate. Paragraph 15, which I'm incorporating by reference, that Respondent has not violated Section 67.403(a)(1) of the Federal Aviation Regulations, which states no person may make or cause to be made a fraudulent or intentionally false statement, et cetera, et cetera, et cetera, to the end of that paragraph.

I am incorporating by reference, paragraph 16, incorporating by reference pursuant to Section 67.403(B)(1), -- the non-intentionally false and fraudulent statements in paragraph three, seven, and eleven, above, are not grounds for revocation of the airman, ground instructor, or medical certificate, or rating held by Respondent Dillmon.

As a result of the foregoing, this judge finds that safety in air commerce or air transportation and the public interest does not require the affirmation of the Administrator's Emergency Order of Revocation dated August 27th, 2008 in view of the Respondent's non violation of 67.403(b)(1).

ORDER

IT IS ORDERED AND ADJUDGED that the Administrator's Emergency Order of Revocation, dated August 27th, 2008, be and the same is hereby reversed and dismissed.

This order is issued by William E. Fowler, Jr., a United States Administrative Law Judge.

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DATED & EDITED ON
OCTOBER 10, 2008

William E. Fowler, Jr.
Chief Judge