SERVED: July 1, 2010

NTSB Order No. EA-5530

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. PIYA NAVANUGRAHA, Respondent.	Docket SE-18633RM

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] Navanugraha v. FAA et al., Case No. 09-1259 (May 13, 2010) (per curiam). 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

the July 20, 2009 written order of Administrative Law Judge Patrick G. Geraghty, granting the Administrator's motion for summary judgment.[2] By granting that motion, the law judge denied respondent's appeal of the Administrator's emergency revocation order, in which the Administrator alleged that respondent violated 14 C.F.R. §§ 61.15(e)[3] and 67.403(a)(1).[4] The law judge affirmed the emergency order of revocation of respondent's private pilot, airman medical, and mechanic certificates, as well as any other airman certificates that respondent holds.

We denied respondent's appeal of the law judge's order, on the basis that the Administrator unequivocally proved that

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(..continued)
does not typically participate in the judicial review of its decisions. See 49 C.F.R. § 821.64(a).

[2] A copy of the law judge's order is attached.

[3] The pertinent portion of § 61.15(e) provides that, "[e]ach person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division … not later than 60 days after the motor vehicle action." The Administrator's complaint also referenced § 61.15(f), which provides that failure to provide such a report is grounds for denial, suspension, or revocation of any certificate.

[4] The pertinent portion of § 67.403(a)(1) prohibits a person from making fraudulent or intentionally false statements on an application for a medical certificate. The complaint also mentioned § 67.403(b) and (c)(1), which provide, respectively, that the Administrator may suspend or revoke all certificates if the person makes a fraudulent or intentionally false statement on an application, and that the making of an incorrect statement in support of an application for a medical certificate may serve as a basis for suspending or revoking a medical certificate.

respondent did not list a conviction on his medical certificate application, as required.[5] After reviewing our order, the D.C. Circuit issued an unpublished order remanding the case to us, in light of their recent ruling on a similar issue, in Singleton v. Babbitt, 588 F.3d 1078 (D.C. Cir. 2009). In Singleton, the D.C. Circuit held that our disposal of a case involving intentional falsification via summary judgment was inappropriate, because a hearing was necessary to determine an applicant's state of mind when completing the application, especially if the applicant argued that he or she misunderstood a question on the application. As a result of the Singleton decision, we remand

[5] The Administrator provided the report of the March 27, 2009 conviction that respondent timely submitted to the FAA, showing that he had been convicted of driving while having a blood alcohol level that exceeded the legal limit. M. for Summary J., Exh. G. The evidence also indicated that, following the receipt of this timely report, the FAA Security Division opened an investigation and found that respondent had been arrested on September 1, 2008, and that his license was suspended on November 19, 2008. The Administrator attached the following documents to the motion: a "Notification of Findings and Decision" from a Driver Safety Officer at the California Department of Motor Vehicles (DMV), which ordered the suspension of respondent's driver's license, based on driving with a blood alcohol level that exceeded the limit; a Driver Record Information sheet from the California DMV showing the suspension of his driver's license due to "excessive blood alcohol level"; a Declaration of Diligent Search from Brenda L. Smith, a special agent for the FAA Security and Investigations Division, stating that the Division conducted a search of the reports submitted pursuant to 14 C.F.R. § 61.15(e) and did not locate any record or entry of any report from respondent showing that the California DMV suspended his driver's license following the September 1, 2008 incident; and a copy of his medical certificate application.

this case to the law judge for a hearing on the issue of whether respondent understood that he was required to report the driver's license suspension. The law judge should also consider respondent's assertion that he was unaware of whether he had been convicted in 2008, and that he believed his 1998 conviction, which he reported on his application, was his sole conviction. Where a respondent's testimony as to his subjective understanding of an application question or a reporting requirement is a material issue in a case involving an alleged intentional falsification charge, we will expect an express credibility determination on the record from the law judge.

ACCORDINGLY, IT IS ORDERED THAT:

This case is remanded to the law judge for further proceedings consistent with this opinion and order.

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

EMERGENCY
SERVED JULY 20, 2009

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

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J. RANDOLPH BABBITT Administrator Federal Aviation Administration, Complainant, v. **PIYA NAVANUGRAHA,** Respondent.	**Docket No. SE-18633** **JUDGE GERAGHTY**

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DECISIONAL ORDER

This matter is before the Board upon the Appeal of Piya Navanugraha, hereinafter Respondent, from an Emergency Order of Revocation[1] which seeks to revoke his Private Pilot, Mechanic Certificates, Airman Medical Certificate (AMC) and any other AMC or airman certificate held by him.

That Order serves herein as the Complaint and was made upon behalf of the Administrator, Federal Aviation Administration (FAA), the Complainant in this action.

As basis for the action taken by Complainant, FAA, the Complaint alleges as

[1] Complainant filed a "Second Amended Emergency Order of Revocation" and that Second Amended Order is considered as the effective Complaint in this proceeding.

follows:

1. You are the holder of Private Pilot Certificate, No. 003096744.

2. On or about September 1, 2008, you were arrested in Riverside County, State of California, for driving under the influence.

3. On or about November 19, 2008, you received a suspension of your driver's license from the California Department of Motor Vehicles for an Excessive Blood Alcohol Level offense.

4. The above suspension is an alcohol-related motor vehicle action, which you are required to report to the Federal Aviation Administration (FAA), Civil Aviation Security Division, not later than 60 days after the motor vehicle actions.

5. Incident to paragraphs 3 and 4 above, you did not report the motor vehicle action.

6. On or about January 19, 2009, you applied for and were issued a First Class Medical Certificate.

7. On the above-mentioned application, in response to Item 18.v, "Medical History. – HAVE YOU EVER IN YOUR LIFE…HAD ANY OF THE FOLLOWING?...Conviction and/or Administrative Action History, 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 rehabilitation program," you answered "Yes," and in the Explanation section that follows, you stated, "previously reported, convicted DUI in 1998." You failed to include your September 1, 2008 arrest for driving under the influence, as described in paragraph 2 above, and your November 19, 2008 driver license suspension for an excessive blood alcohol level, as described in paragraph 3, above, in the Explanations section.

8. Incident to paragraphs 2, 3, 6, and 7 above, the information you provided under Item 18.v, including the Explanations section on the application was not correct.

9. Incident to paragraphs 6 and 7 above, the FAA relied upon the information you provided in response to Item 18.v. including the Explanations section on the application.

10. Incident to paragraphs 2, 3, 6, and 7 above, the information you provided in response to item 18.v, including the Explanations section on the application

was fraudulent or intentionally false.

11. Incident to paragraphs 6 and 7above, the information you provided in response to Item 18.v, including the Explanations section, was material in that an Airman Medical Certificate was issued without consideration of your actions as described in paragraphs 2 and, 3.

12. Item 20 of the application form referenced above, you certified that the above described entries were complete and true, knowing that said entries were false.[2]

Under those allegations, the Complaint charges that Respondent has acted in regulatory violation of the provisions of Sections 61.15 (e); (f); 67.403(a) (1); 67.403(b) and 67.403(c)(1), Federal Aviation Regulations (FARs).[3] It is further alleged that, upon factual allegations of the Complaint and the charged violations, Respondent has shown that he lacks the qualification and requisite degree of judgment and responsibility required to hold any airman or AMC.

The Respondent has submitted an Answer to FAA's Second Amended Emergency Order of Revocation (EOR) and therein admitted the allegations stated in Paragraphs 1 and 6, which are, therefore, considered as established.

Complainant filed a Motion for Summary Judgment along with supporting documentation and as such documentation would, if trial were held, be admissible evidence, that documentation is properly before the Board for consideration in the resolution of said Motion.

Respondent has submitted his response in opposition to Complainant's Motion and the arguments raised are considered below. Respondent argues firstly that Summary Judgment remedy is not an authorized procedure in an emergency proceeding. That contention is rejected. Rule 821.17 (d) provides for summary judgment where the legal criteria for such are met and the Board has repeatedly affirmed

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[2] Second Amended Emergency Order of Revocation/Complaint.

[3] See Attachment for the applicable provisions of the cited FARs.

resolution by summary judgment in this type of case.[4]

Summary Judgment is warranted where, upon the proceedings' entire record, there is established that there does not exist any genuine dispute as to a material fact. And in resolving such a Motion, the burden rests upon the moving party to demonstrate such. However, where such Motion is supported by admissible supporting documentation, the non-moving party may not rely solely upon denials, but must show by documentation and set forth specific facts showing a genuine issue of fact for trial. Herein, Respondent has not submitted any such documentation or affidavit other than Respondent's "Declaration."

Both in his Answer and in his Response in Opposition, Respondent contends that Complainant lacks the authority to take action against Respondent's Mechanic Certificate in this proceeding as Respondent, as a holder of a Mechanic Certificate, is not the holder of an "airman" certificate.

That contention is rejected. The definition of the term "airman" is stated in 49 USC 40102 (a)(8) and states that the term airman includes, inter alia, a mechanic. Likewise, Section 44702 authorizes Complainant to issue, inter alia, airman certificates and Section 44703 provides that when issuing airman certificates, such certificate shall specify the capacity the holder of the certificate may serve as an airman.[5] Herein, Respondent is held to be an airman holding an airman certificate specifying that he may act as a mechanic with respect to aircraft and, therefore, Respondent's Mechanic Certificate is subject to Complainant's authority within this proceeding.

Respondent disputes the charged violation of Section 61.15 (e) FARs, and the related allegations of the Complaint. Respondent's argument begs the issue which is, did Respondent make the required report within the time prescribed by the Regulation,

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[4] See, e.g., Administrator v. Martinez, EA-5409, at 8 (2008; Administrator v. Singleton, EA-5437 (2009).

[5] 49 USC Section 44702; 44703 (a)(b)(D).

i.e., within 60 days after the motor vehicle action. Respondent contends that he made the report, but concedes that such was untimely made. Exhibit D of Complainant's Motion states that the FAA has no record of a motor vehicle report by Respondent of the November 19, 2008 motor vehicle action by the State of California, which is established by Motion Exhibit B.[6]

I conclude, therefore, that the evidence does establish the validity of the allegations of Paragraphs 2, 3, 4 and 5 of the Complaint and, therefore, it is held that Respondent has acted in violation of Section 61.15(e) FARs.

In his Answer, as noted above, Respondent denied all but two (2) of the allegations of the Complaint. However, the Exhibits supporting the Motion establish their validity and Respondent's response furnishes no contradicting evidence, thus, there are only denials which are not legally sufficient to dispute those allegations.

I find, accordingly, that the allegations of Paragraphs 7 and 8 of the Complaint are established.

On the charge of intentional falsification the Board adopts a three-pronged test in that the response made must be shown as (1) false, incorrect (2) to a material fact (3) made with knowledge of its falsity.[7]

The Board has clearly held that an incorrect, false response on an application is to a material fact when that alleged incorrect response is capable of influencing the FAA's decision concerning issuance of certification and that a Respondent's answers to all question on an AM Application (AMA) are material.[8]

The AMC Respondent obtained was issued upon the information provided

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[6] Complainant's Motion, Exhibit D; Declaration of Diligent Search.

[7] E.g. Administrator v. Singleton, EA-5437 at 6, 7 (2009).

[8] Administrator v. Reynolds, EA-5135 at 7 (2005); Administrator v. McGonegal, EA-5224 at 4 (2006).

by Respondent on the AMA of January 19, 2009, and, thus, the responses made therein are material. Respondent's denials in his Answer are insufficient and I find that the allegations of Paragraphs 9, 11 of the Complaint are established.

I do find that contrary to Respondent's denial that the allegation of Paragraph 12, Complaint, is established.[9]

As to the question of intentional falsification, while Respondent, in his Declaration concedes that his entry in the Explanation portion of Item 18.v is incorrect, "erroneous," it is denied that such incorrect entry was made with intent to falsify.

The Motion Exhibits establish and Respondent concedes that on September 1, 2008, he was arrested on a charge of Driving Under Influence of Alcohol and that his driving license was suspended thereafter on November 19, 2008. Paragraph 2 of the Complaint is, therefore, established.

In support of the contention that there was no intent to make an incorrect, false response, it is alleged that the failure to note the September 1, 2008 arrest and the November 19, 2008 events was due to, "…communication errors only between me (Respondent), the doctor (Aviation Medical Examiner (AME) and the receptionist." And, further, that Respondent believed he did not have to report the November 19, 2008 suspension as he had not as yet been convicted of the charged offense.[10]

The Board has held that an incorrect/false answer on an AMA is prima facie proof of intent to falsify.[11] Herein, Respondent's false/incorrect response appears in the "Explanation" section of the AMA which is provided for the making of explanation of responses made to Items 18.v/18.w of the AMA. As pertinent herein, item 18.v inquires about a "… History of (1) any arrest(s) and/or convictions…(2) history of any arrest(s),

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[9] Complainant's Motion, Exhibit E.

[10] Respondent's Brief at 7, Declaration, Paragraphs 4(d), 6.

[11] Administrator v. Bell, EA-4764 at 4 (1999).

and/or convictions, and/or administrative actions…which result in … suspension…of driving privileges….”[12] The Board has opined that the questions in Item 18.v of the AMA are clearly stated and are not considered as being confusing to an individual of ordinary intelligence.[13] Thus, in consideration of the fact that the question of Item 18.v clearly asks about any history of “arrest(s) and/or administrative actions,” both of which Respondent incurred just months prior to the date of his AMA, the contention that he had a belief that he did not need to report, same as he had not as yet been convicted, is not found to be credible.

Likewise, it is not credible that any alleged confusion occurring between Respondent, the receptionist and the AME concerning the marking of Item 18.v, in light of the clear language, that query would not support a belief that recordation of Respondent’s most recent arrest and suspension would not be required to be entered in the Explanation box in which he referenced his older driving history. The claim of error is unavailing as the Board has held that failure to read or consider a question on an AMA closely enough to provide accurate answers is not a basis to dispute a charge of intentional falsification.[14]

I conclude, therefore, that on the record in its entirety, that it is established that Respondent, on his AMA did make a false/incorrect, material entry and that such was made with knowledge of its falsity. I find, therefore, that on the weight of the credible evidence that Respondent has acted in violation of Sections 67.403(a)(1); 67.403(b) and 67.403(c)(1), FARs. I reach such, bearing in mind evidence herein is to be viewed in light favorable to Respondent; however, upon the evidence, both factual and circumstantial, I, as trier of fact, could not reach a result favorable to Respondent.

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[12] Complainant’s Motion, Exhibit E, Item 18.v.

[13] Administrator v. Sue, EA-3877 at 5 (1993).

[14] Administrator v. Boardman, EA-4515 at 8-9 (1996); Administrator v. Martinez, EA-5409 at 9 (2008.

On the issue of appropriate sanction herein, the Board precedent clearly establishes that for instance of falsification, the sanction of revocation is warranted.[15]

Summary judgment is appropriate wherein, as it is herein, demonstrates that there does not exist a genuine issue of material fact in dispute, and where, as noted, the record taken as a whole would not lead to a favorable finding for the non-moving party.

Utilizing those criteria and on precedent, I find conclude and find that Complainant's Motion for Summary Judgment must be, and hereby is granted. I further hold that the Second Amended Emergency Order of Revocation, the Complaint, herein be, and hereby is, affirmed as issued on the violations proven. It is shown that Respondent lacks the qualifications required to be the holder of any airman or medical certificate.

SO ORDERED.

ENTERED at Denver, Colorado this 20th day of July 2009.

PATRICK G. GERAGHTY
ADMINISTRATIVE LAW JUDGE

[15] Administrator v. Farrington, EA-4171 (1994); Administrator v. McCarthney, 7 NTSB 670, 672 (1990).

ATTACHMENT

1. Section 67.403(a)(1) states:

   (a) No person may make or cause to be made –

   (1) A fraudulent or intentionally false statement on any Application for a medical certificate or on a request for any Authorization for Special Issuance of a Medical Certificate (Authorization) or Statement of Demonstrated Ability (SODA) under this part.

2. Section 67.403(b) provides:

   (b) The commission by any person of an act prohibited under Paragraph (a) of this section is a basis for –

   (1) Suspending or revoking all airman, ground instructor, And medical certificates and ratings held by that person.

3. Section 67.403(c)(1) provides:

   (c) The following may serve as a basis for suspending or revoking a medical certificate; withdrawing an Authorization or SODA; or denying an application for a medical certificate or request for an Authorization or SODA.

   (1) An incorrect statement upon which the FAA relied, made In support of an application for a medical certificate or request For an Authorization or SODA.

4. Section 61.15(d) provides as pertinent:

   Another vehicle action occurring within 3 years of a previous motor Vehicle action…is grounds for suspension or revocation.

Section 61.15(e) provides as pertinent:

Each certificate holder must, within 60 days of a motor vehicle Action file a written report of such to the FAA, Civil Aviation Division.

Section 61.15(f) provides as pertinent:

Failure to comply with paragraph 61.15(2) is grounds for suspension or revocation of any certificate issued under Part 61.