

SERVED: August 17, 2010

NTSB Order No. EA-5537

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 4th day of August, 2010

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J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18719
v.)	
)	
CLAUDIO OCCHIONE,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

Respondent, who now proceeds pro se, appeals the oral initial decision of Chief Administrative Law Judge William E. Fowler, Jr., in this matter, issued following an evidentiary hearing held on March 16 and 17, 2010.¹ By that decision, the law judge affirmed the Administrator's complaint and ordered the

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

suspension of respondent's pilot certificates, including his airline transport pilot (ATP) certificate, pending respondent's successful reexamination of his qualifications to hold an ATP certificate, under 49 U.S.C. § 44709.² Respondent appeals the law judge's order. We deny respondent's appeal.

The Administrator's emergency order³ against respondent, issued on October 23, 2009, alleged that respondent failed a practical examination (commonly known as a "check ride") administered by a PSA Airlines (hereinafter, "PSA") aircrew program designee in a simulator for a CL-65 type rating on May 29, 2009. The order stated that an FAA inspector observed the check ride after respondent and PSA requested he do so. The order alleged that respondent committed several errors during the check ride: he was informed that the number 2 hydraulic B pump was deferred pursuant to the PSA minimum equipment list (MEL), but failed to review the MEL's restrictions for the deferral; he reacted inappropriately to a rapid decompression scenario in the simulator, and demonstrated a lack of understanding regarding pressurization; he did not follow an air traffic control (ATC) instruction to turn to a certain heading;

² Title 49 U.S.C. § 44709(a) provides that, "[t]he Administrator of the Federal Aviation Administration may ... reexamine an airman holding a certificate issued under section 44703 of this title."

³ Respondent subsequently waived the expedited procedures normally applicable to emergency proceedings.

after being vectored to a non-precision approach, respondent had a minimum descent altitude of 700 feet, but descended to 660 feet and "made no attempt to climb back to" 700 feet; after initiating a missed approach procedure, which calls for a climb to 2,100 feet, he climbed to 1,700 feet and leveled until receiving questions from ATC; and he inappropriately handled an engine fire, after the missed approach procedure. The order stated that the aforementioned failures showed that respondent lacked an understanding of aircraft systems, of the importance of limitations contained in an MEL and of the dangers of operating an aircraft without pressurization and flying at the wrong altitude, as well as that respondent demonstrated an inability to turn to a heading, maintain situational awareness, and effectively manage crew resources. The order further alleged that a review of respondent's training records indicated that the May 29, 2009 check ride was his fourth unsuccessful attempt to complete a check ride for a CL-65 type rating. The order stated that the aforementioned failures caused the Administrator to determine that a reexamination of respondent's competency was necessary, and directed respondent to appear for a reexamination of the appropriate portions of the ATP certificate and airplane multiengine land practical test standards.

After respondent appealed the order, the law judge scheduled a hearing, at which the Administrator's counsel called five witnesses and introduced several exhibits. Darren Harris, a check airman supervisor for PSA, testified that he gave respondent the May 29, 2009 check ride, as well as a check ride a year prior, which respondent failed. Mr. Harris reviewed several aspects of respondent's performance during the May 2009 check ride that concerned him: he stated that respondent would have skipped the "entire receiving checklist," which is an important checklist that a pilot must complete first, if his second-in-command (SIC) had not prompted him to review it (Tr. at 23-24); that respondent failed to use lights, even though the simulator was programmed for a nighttime flight (Tr. at 25-26); that respondent kept the aircraft level at 35,000 feet longer than anticipated after the decompression event (Tr. at 32, 35); that respondent instructed his SIC to answer ATC radio calls during the descent, even though answering such calls is contrary to PSA procedures (Tr. at 34-35); that respondent proceeded 100 degrees past the heading that ATC issued (Tr. at 37); that respondent reacted incorrectly to the decompression, because he believed that he could control the pressurization, even though the aircraft had a simulated hole in it (Tr. at 41); that respondent was unable to navigate to the intersection that ATC issued (Tr. at 46-47); that respondent leveled off at 40 feet

beneath the required 700 feet minimum descent altitude prior to landing (Tr. at 49); that respondent then leveled off at 400 feet below the minimum when he began the missed approach (Tr. at 51); and that respondent did not adhere to the flight operations manual and pilot operating handbook with regard to the simulated engine fire after the missed approach, because he shut down the engine too quickly (Tr. at 52-53). Mr. Harris stated that he terminated the check ride after observing these errors, and that, during the post-flight debriefing, respondent accused everyone in the check ride of trying to sabotage the check ride.⁴

The Administrator also called William Best, an aviation safety inspector at the Cincinnati Flight Standards District Office (FSDO) to testify. Inspector Best stated that he also observed the check ride, and corroborated Mr. Harris's recollection of the check ride. Inspector Best recalled that respondent was confused about the heading ATC issued to him, and about the pressurization of the aircraft. Inspector Best also acknowledged an error in the Administrator's original order concerning the missed heading, and stated that he wrote the

⁴ The Administrator also called Michael Darr (a PSA pilot who acted as respondent's SIC during the check ride) and Joseph Connolly (a PSA pilot who is a member of the training review committee for the Air Line Pilots Association (ALPA), and who observed the check ride), and their testimony corroborated Mr. Harris's recollection of the check ride.

wrong numbers on the original order.⁵ Inspector Best opined that, during the engine fire scenario, respondent should have used both engines as long as they had power, but did not, and that respondent appeared to have problems setting up the flight management system. Inspector Best testified that everything he observed respondent do, with the exception of some steep turns and stalls during the ride, concerned him.⁶ The Administrator's

⁵ The original order stated:

A simulated [ATC] instruction was given to you ... instructing you to 'turn right, heading 350 degrees for the descent'. At the time your heading was 330. You then established the aircraft in a right turn and rather than roll out after 20 degrees of turn, you continued to turn the aircraft a total of 480 degrees, passing a 350 degree heading twice and rolling out on a heading of 090 before correcting back to a 350 degree heading after being prompted by the SIC.

Compl. at ¶ 7. At the hearing, the law judge allowed the Administrator's counsel to amend the order, over respondent's counsel's objection, by replacing 480 degrees with 120 degrees, deleting the word "twice," and replacing "SIC" with "ATC." Tr. at 7-9.

⁶ Inspector Best testified as follows:

Q. Mr. Best, can you -- can you give me two or three instances of situations in the context of a professional airline crew that would give rise to a reason or provide a reason to reexamine an airman's competency?

A. Well, in this case here of the case with Mr. Occhione and his check ride, everything that I saw that day would -- gave me reason for this except for the steep turns and stalls. And I would want to see them again too in order to make sure it wasn't a fluke.

Tr. at 204.

counsel concluded the case by calling Ellen Tom, an aviation safety inspector who serves as air crew program manager for the CL-65 program at PSA, to testify. As Inspector Best's supervisor at the time of the check ride, Inspector Tom evaluated Inspector Best's recollection of the check ride and determined that a reexamination would be appropriate. Inspector Tom also identified several sets of practical test standards with which respondent allegedly did not comply during the check ride.

In rebuttal, respondent attempted to dispute that he failed the check ride by calling witnesses who testified that they believed the management at PSA sought to sabotage respondent's performance on the check ride. Christopher Collins, an aviation safety inspector at the Dallas FSDO, testified that he was a pilot at PSA from 1997 to 2007, and knew that pilots complained about the high standards of one PSA pilot—Jeff Gilliam—who was particularly unforgiving in administering check rides.⁷ Inspector Collins also testified that he recalled telling respondent that he believed PSA was "out to get [respondent]." Tr. at 273. Respondent also called William DeBlois, who served

⁷ The record indicates that Mr. Gilliam administered respondent's 2007 check ride, which was unsuccessful. As stated above, Mr. Harris administered respondent's May 29, 2009 check ride, which prompted the Administrator to determine that a reexamination was appropriate.

as the non-flying pilot during respondent's 2007 check ride. Mr. DeBlois recalled that Mr. Gilliam only provided a "minimal" pre-flight briefing prior to commencing the 2007 check ride, and that Mr. Gilliam was not satisfied with respondent's handling of an engine fire, even though Mr. DeBlois believed respondent acted appropriately. Mr. DeBlois stated that he was concerned with how Mr. Gilliam administered the check ride, but did not believe Mr. Gilliam was unfair, and acknowledged that respondent failed to adhere to a few procedures. Respondent also called Mr. Gilliam to testify. Mr. Gilliam stated that he believed he was fair to respondent during the 2007 check ride, and that he had no intent to confuse respondent; he also identified four main reasons respondent failed the 2007 check ride.⁸

Respondent also called Walter Sain, an FAA aviation safety and principal operations inspector, who stated that he had observed respondent's "check ride." Tr. at 496. The report that Inspector Sain identified as relating to that ride, however, is dated May 18, 2009 (Exh. R-26); ostensibly, Inspector Sain was present for a check ride for training purposes, prior to the May 29, 2009 check ride. Inspector Sain

⁸ Mr. Gilliam testified to observing problems maintaining altitude, with steep turns, with a stabilized approach, and landing to the side of the intended runway.

acknowledged that his report listed some positive aspects of respondent's performance.

Similarly, respondent called Matthew Christner, who administered respondent's training check ride on May 16, 2009, which respondent did not complete satisfactorily. Mr. Christner listed four areas of concern regarding the ride, and testified that respondent seemed unfamiliar with several procedures.⁹

Finally, respondent called Vincent Salemme, who testified that, as a captain at PSA, he flew with respondent and believed respondent was safety-conscious and exercised good judgment.

Respondent also testified on his own behalf. Respondent's testimony on direct examination consisted of an exhaustive recount of his 2007 check ride, and how he believed it was unfair. Respondent also recalled that he had been subject to derogatory comments at PSA concerning his Italian ethnicity, and that he had filed complaints with ALPA, PSA's management, and the Department of Labor concerning the comments and his failure to be promoted to captain. Respondent also stated that he did not believe Mr. Harris was a fair check airman, and that he recorded the May 2009 check ride on a hidden audio recording

⁹ Mr. Christner listed the following as areas of disapproval during the May 2009 check ride: "preflight procedures, steep turns, approaches to stalls and instrument procedures non-precision approach." Tr. at 516.

device in his pocket.¹⁰ Respondent generally denied failing the check ride; he denied that it took him 2 to 3 minutes to descend during the depressurization scenario, denied that he did not level at the appropriate altitude during his descent following the pressurization problem and prior to landing, and denied that he made a wrong turn after ATC issued him a new heading.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he determined that the Administrator provided ample evidence to prove the allegations in the order. The law judge described the evidence and stated that the Administrator had a "very, very reasonable basis" to order a reexamination of respondent's qualifications. Initial Decision at 560. The law judge recognized that respondent was "a seasoned pilot," and had acted as a whistleblower in reporting the shortcomings that he perceived to exist at PSA. The law judge determined that the Administrator's witnesses provided logical, compelling, and persuasive evidence to establish that the Administrator had a reasonable basis to order a reexamination of respondent's qualifications.

On appeal, respondent asserts several arguments. Stated simply, respondent contends that the evidence that the Administrator provided did not prove that he acted

¹⁰ The law judge sustained the Administrator's attorney's objection to admission of the audio recording. Tr. at 488-89.

inappropriately during the May 29, 2009 check ride; that his evidence on rebuttal established that PSA had an agenda to sabotage the check ride; and that the law judge erred with regard to two rulings at the hearing—his decision to exclude the audio recording from the record, and his decision to allow the Administrator’s amendment to the complaint at the hearing. The Administrator opposes each of respondent’s arguments, and urges us to affirm the law judge’s decision.

We first note that we do not find respondent’s arguments concerning the law judge’s rulings to be persuasive. We have long held that law judges have significant discretion in overseeing testimony and evidence at hearings, and we typically review our law judges’ evidentiary rulings under an abuse of discretion standard, after a party can show that such a ruling prejudiced him or her.¹¹ In this case, respondent’s argument that the audio recording would have exonerated him is unpersuasive. The law judge did not err in not allowing the

¹¹ See, e.g., Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Bennett, NTSB Order No. EA-5258 (2006)). We will not overturn a law judge’s evidentiary ruling unless we determine that the ruling was an abuse of discretion. See, e.g., Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001). Cf. Administrator v. Ferguson, 352 Fed. Appx. 192, 2009 WL 3747426 (9th Cir. 2009) (holding that law judge erred in curtailing the cross-examination of FAA witness, because the witness was central to the Administrator’s case and the ruling was therefore prejudicial).

audio recording into evidence, because respondent's testimony, which, although somewhat disorganized, was lengthy and detailed, and sufficed to convey respondent's recollection of the check ride. The audio recording, which came about surreptitiously, would have been repetitive of respondent's testimony.¹²

In addition, the law judge's permission for the FAA to amend paragraph 7 of the complaint, concerning respondent's error in turning in response to ATC's issuance of a heading, was not erroneous. It did not prejudice respondent, because the allegations of paragraph 7 of the complaint amounted to a contention that respondent did not respond appropriately to an ATC instruction. We have previously held that, in reviewing aviation certificate actions, we apply the principles of "notice pleading," which refers to "a procedural system requiring that the pleader give only a short and plain statement of the claim, showing that the pleader is entitled to relief, and not a complete detailing of all the facts."¹³ The violation that

¹² Respondent appears to contend that the audio recording could prove that he correctly responded to the ATC heading at issue during the check ride; however, a recording of respondent verbally repeating the heading to ATC does not establish that respondent operated the aircraft to move correctly to the heading. We also note that the audio recording contained no exculpatory evidence, but instead corroborated the Administrator's witnesses' testimony.

¹³ Administrator v. Darby, NTSB Order No. EA-5521 at 21 (2010) (quoting Black's Law Dictionary 941 (7th ed. 2000)).

paragraph 7 alleged—that respondent did not respond appropriately to a heading that ATC issued—did not change. The Administrator’s correction to the complaint concerning the heading to which respondent turned did not affect the charge of paragraph 7. We find that respondent was reasonably notified of the allegation, consistent with a notice pleading standard, in spite of the incorrect heading that the complaint originally listed.

With regard to the central issue of respondent’s appeal, we agree with the law judge that the Administrator had a reasonable basis for requesting reexamination of respondent’s qualifications. We have previously acknowledged that the Administrator has significant discretion in determining whether such reexaminations are warranted.¹⁴ We also note that we recently decided a case concerning a reexamination that is similar to the case at issue here; in Administrator v. Bakhit, NTSB Order No. EA-5489 (2009), we did not find persuasive the respondent’s argument that his company intended to sabotage two

¹⁴ Administrator v. Sanchez, NTSB Order No. EA-5326 (2007) at 4 (stating that, “[i]t is well-settled that the Board’s inquiry into the reasonableness of a reexamination request is a narrow one,” and quoting Administrator v. Santos and Rodriguez, NTSB Order No. EA-4266 at 4 (1994), for the standard that a “basis for questioning competence has been implicated, not that a lack of competence has been demonstrated”); see also Administrator v. Hutchins, NTSB Order No. EA-4899 (2001); Administrator v. Wang, 7 NTSB 752 (1991).

proficiency checks that he did not complete successfully. We viewed the circumstances of the proficiency checks discussed in Bakhit in light of the standard that the Administrator need only establish that he has a reasonable basis for ordering a reexamination of a pilot's qualifications. While we acknowledge that the record in this case indicates that such reexaminations are atypical,¹⁵ we nevertheless continue to analyze appeals concerning reexaminations under a standard of reasonableness.

In this case, the record unequivocally establishes that the Administrator had a reasonable basis to order a reexamination of respondent's qualifications. The law judge correctly determined that the testimony at the hearing, which consisted of several witnesses' recounts of the many errors that respondent committed during the May 29, 2009 check ride, proved the allegations of the Administrator's complaint. Such testimony established that respondent did not adhere to the requirements in the MEL until prompted, once he began taxiing; that he made the wrong decisions when confronted with the depressurization scenario, took too long to initiate the emergency descent, and, during the descent, went the wrong way in response to a heading issued by ATC; that he erred during the non-precision approach because he proceeded to 660 feet, rather than the minimum 700 feet; that he

¹⁵ See Tr. at 208 (Inspector Best's testimony) and 263 (Inspector Collins's testimony).

also erred during the missed approach when he ascended to 1,700 feet, rather than the minimum 2,100 feet; and that, when confronted with the engine fire at the end of the check ride, respondent shut down the engine, rather than proceeding through the protocol of allowing his SIC to do so.

Respondent's contention that PSA set him up to fail is not persuasive, in light of the evidence in the record. While respondent attempted to establish that this check ride was unfair with his own and other witnesses' testimony, other witnesses testified that they believed the scenarios that respondent confronted were typical, and that Mr. Harris was fair in administering the check ride. See Tr. at 141 (Mr. Connolly's testimony). In addition, several witnesses testified that the types of scenarios that respondent encountered during the May 29, 2009 check ride, such as a loss of pressurization and an engine fire, were typical of the type of check ride at issue here. Moreover, we do not find respondent's arguments concerning previous check rides or training at PSA to be relevant to his argument that the May 29 check ride was abnormal. The Administrator's complaint contained an allegation that the May 29 check ride was the fourth check ride that respondent failed to complete successfully. Even if the Administrator had not proven this particular allegation, we still would agree with the law judge that the Administrator had

a reasonable basis for ordering a reexamination under § 44709, because the errors respondent committed during the May 29 check ride were serious, and indicative of a lack of understanding of the procedures for dealing with dangerous situations. To the extent that respondent introduced evidence concerning the previous check rides and training exercises in an attempt to show that PSA sought to sabotage his career, we note that our jurisdiction in reviewing this case is limited to whether the Administrator had a reasonable basis to order that respondent complete a reexamination. After appropriately considering the entire record in this matter, we find that the Administrator's basis in this case was reasonable.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's decision is affirmed; and
3. The Administrator's emergency suspension of respondent's pilot certificates, including his ATP certificate, pending respondent's successful completion of a reexamination under 49 U.S.C. § 44709, is affirmed.

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

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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 Claudio Occhione from an Emergency Order of Suspension dated October 23, 2009, which seeks to suspend all pilot certificates held by Respondent Occhione, particularly Respondent's airline transport pilot certificate.

1 The Administrator's Emergency Order of Suspension dated
2 October 23, 2009 seeks to suspend all pilot certificates,
3 including the airline transport pilot certificate number 2467858
4 held by Respondent Occhione, until such time as the Respondent
5 establishes by being reexamined that he possesses the
6 qualifications to hold specific certificates that the Federal
7 Aviation Administrator seeks to suspend.

8 The Administrator's Emergency Order of Suspension, as
9 promulgated pursuant to the Board's Rules of Practice,
10 specifically section 821.42 of these rules, that while the
11 emergency aspects of this proceeding has been waived by the
12 Respondent, it is optional to me as the judge in this proceeding
13 as to whether I proceed to issue an oral initial decision. I'm
14 going to do that at this time.

15 Following notice to the parties this matter came on for
16 trial on March 16th and 17th, 2010 here in Charlotte, North
17 Carolina. The Respondent, Claudio Occhione, was present at all
18 times and was very ably represented by Christopher Hudson, Esquire.

19 The complainant in this proceeding, the Federal Aviation
20 Administrator was, likewise, very ably represented by Chris
21 Zurales, Esquire, of the Regional Counsel's Office, Great Lakes
22 Region of the Federal Aviation Administration.

23 Both parties have been afforded the opportunity to offer
24 evidence, to call, examine, and cross-examine witnesses on behalf
25 of their sides of the case.

1 In addition, the parties were afforded the opportunity
2 to make final summary statements, in the nature of final argument,
3 in support of their respective positions.

4 I reviewed the testimony and the evidence that we have
5 received during the course of this two-day proceeding, both the
6 evidence on behalf of the Administrator as well as the evidence on
7 behalf of the Respondent. The Administrator has had upwards of
8 five documentary exhibits dually admitted into the hearing record
9 and the testimony of five witnesses.

10 The Respondent has had the testimony of seven witnesses,
11 including the Respondent. Respondent had 20 documentary exhibits
12 duly admitted into the hearing record as it's presently
13 constituted.

14 Now, in the final analysis, the paramount, central and
15 overriding issue in this proceeding is, was there a reasonable
16 basis for the FAA Administrator to request a reexamination of
17 Respondent Occhione? Based on my review of the evidence coupled
18 with the documentary exhibits, my decision and determination is
19 that there was a very reasonable basis for the Administrator to
20 issue his Emergency Order of Suspension pursuant to Rule 44709.

21 What we have here, and the evidence and the testimony by
22 the Administrator's five witnesses were very logical, compelling
23 and persuasive. We're dealing with a seasoned pilot here, in
24 Mr. Occhione. He has done very well with PSA, his principal
25 employer. He's been with them in excess of three years and he's

1 done a very good job as first officer with that airline. As is
2 natural and understandable with all human beings, he seeks to
3 upgrade himself to become captain, to become an airline transport
4 rated pilot. A pilot, if he's so certificated and rated, must
5 proceed and operate aircraft with the highest degree of care,
6 judgment and responsibility. That is what this examination of May
7 29, 2009, which is one of the corollary and main issues that we're
8 concerned with here.

9 After review of the testimony, and the exhibits,
10 unfortunately Respondent Occhione did not pass his examination.
11 He is a -- as I mentioned earlier, a seasoned, a veteran airman.
12 He also I think -- has engendered some hostility from his employer,
13 PSA, by -- in effect through his grievances that he has filed in
14 effect become a "whistleblower". I'm using these terms in a
15 colloquial sense. He has challenged the system. Unfortunately,
16 and this case, by no means, is exception. In the past
17 "whistleblowers" past have not faired well against the federal
18 government. I mention that in passing.

19 However, I am bound by the evidence that's been produced
20 and placed before me. The evidence set forth by the
21 Administrator's witnesses, as I mentioned earlier, is very logical,
22 compelling and most persuasive. So it is my duty and
23 responsibility to affirm the Administrator's Emergency Order of
24 Suspension of October 23, 2009.

25 Now, why?

1 Well, let's list some of the reasons. What were the
2 reasons that Respondent Occhione did not pass the check ride given
3 to him on May 29, 2009?

4 FAA inspectors in this case have testified copiously and
5 voluminously.

6 One, he missed a minimum equipment list situation
7 concerning the hydraulic pump right at the outset, even before he
8 took off.

9 Two, he did not engage in the lower altitude for the
10 safety of the crew and passengers, which was necessary during the
11 depressurization aspect of this flight.

12 Third, was a non-precision approach, which he did not
13 follow as prescribed by the FAA standards rules and regulations.

14 Fourth, was a missed approach, which was not followed by
15 Respondent Occhione pursuant to the federal rules and regulations.

16 This -- the result of this exam, coupled with the fact,
17 it cannot go without noticing, that there had been three other
18 examinations earlier, same type exams, given to Respondent, which
19 he had failed. As earlier, there certainly was a reasonable basis
20 for the request by the FAA for a re-check of the Respondent's
21 qualifications to hold the certificates that he holds and as well
22 as to judge his competency to possibly be upgraded to a captain's
23 status, pursuant to the requirements of an airline transport
24 pilot's certificate.

25 So ladies and gentlemen, I'm sure you will follow the

1 drift of my ultimate determination in this proceeding by this time.
2 I will now proceed to make the following specific findings of fact
3 and conclusions of law:

4 By his answer through counsel, Respondent has admitted -
5 of the 23 pertinent and salient paragraphs set forth in the
6 Administrator's Emergency Order of Suspension of October 23, 2009.
7 Respondent has admitted paragraphs one, two and three as well as
8 paragraphs eight and nine of the Administrator's Emergency Order.
9 So I will not reiterate those paragraphs.

10 Paragraph four, it is found that Respondent and PSA
11 requested a FAA inspector to observe the check ride of May 29th,
12 2009.

13 Five, it is found that an aviation safety inspector from
14 the PSA certificate management team was assigned to and did
15 observe the aforesaid check ride.

16 Six, it is found that at the beginning of the check ride
17 Respondent was informed that the number two hydraulic B pump was
18 deferred by the PSA FAA approved minimum equipment list.
19 Respondent failed to review these MEL restrictions for this
20 deferral, until prompting by the acting first officer, who was
21 second in command during his check ride.

22 Seven, it is found, and I'm incorporating by reference
23 what paragraph seven of the Administrator's emergency order says.

24 Eight, it is found that, and Respondent has admitted
25 this paragraph, so there's no need to recite that.

1 United States Administrative Law Judge.

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4 EDITED ON

5 APRIL 7, 2010

WILLIAM E FOWLER, JR.

Chief Judge