

SERVED: August 20, 2010

NTSB Order No. EA-5539

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 18th day of August, 2010

_____)	
J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18700
v.)	
)	
DARGAN DEWEY HADDOCK,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

Respondent appeals the oral initial decision of Chief Administrative Law Judge William E. Fowler, Jr., issued on February 23, 2010, following an evidentiary hearing.¹ The law judge affirmed the Administrator's complaint, thereby finding

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

that respondent violated 14 C.F.R. §§ 91.403(a),² 91.13(a),³ and 47.3(b).⁴ We remand for clarification concerning the law judge's order, in accordance with this decision.

The Administrator ordered suspension of respondent's commercial pilot certificate on September 17, 2009. The Administrator's order alleged that, on December 25, 2008,⁵ respondent operated, as pilot-in-command, an experimental aircraft (helicopter) on a flight in the vicinity of Salters, South Carolina, which ended in a crash during approach to landing.⁶ The order stated that, as of December 21, 2008, the helicopter was owned by Haddock Flying Service, but was not properly registered to respondent, and did not comply with the

² Section 91.403(a) provides that the owner or operator of an aircraft is primarily responsible for maintaining the aircraft in an airworthy condition, including compliance with 14 C.F.R. part 39 (airworthiness directives).

³ Section 91.13(a) prohibits operation of an aircraft in a careless or reckless manner so as to endanger the life or property of another.

⁴ Section 47.3(b) states that no person may operate an aircraft that is eligible for registration unless the aircraft: (1) has been registered by its owner; (2) is carrying aboard the temporary authorization required by § 47.31(b); or (3) is an aircraft of the Armed Forces.

⁵ Respondent did not raise a stale complaint motion at the hearing. We note that the notice of proposed certificate action was dated June 23, 2009.

⁶ The order stated that both respondent and a passenger on board the aircraft were injured. We note that the NTSB's investigative arm completed an investigation of the accident. We also note that the investigative function of the NTSB is separate from its judicial function.

applicable experimental operating limitations because it did not have a condition inspection in which it was found to be in a condition for safe operation. The order alleged that both the experimental operating limitations and the airworthiness certificate required the helicopter to undergo a condition inspection every 12 months, and that a review of the aircraft's logbook indicated that the last condition inspection had occurred on April 18, 2007. As a result, the order stated that the helicopter was not in an airworthy condition when respondent operated it.

The law judge ordered a hearing on the Administrator's order, at which the Administrator provided the testimony of two aviation safety inspectors, and introduced a copy of the aircraft's operating limitations, among other records. Inspector Sean Mosher, of the Columbia, South Carolina Flight Standards District Office (FSDO), testified that a condition inspection is important because, without such an inspection, an aircraft's airworthiness is unknown. Inspector Mosher acknowledged that the aircraft's logbook indicated that the helicopter had undergone maintenance on April 1, 2008, but that the logbook entry did not include the requisite language indicating that the condition inspection had occurred. Inspector James Franklin, also of the Columbia FSDO, corroborated Inspector Mosher's testimony, and stated that his

review of the aircraft's registration records indicated that Mr. David Moore, rather than respondent, owned the aircraft. Inspector Franklin explained the process by which one must register an aircraft: the owner must complete a registration form and obtain a bill of sale, and keep the pink carbon copy of the form in the aircraft while mailing the original white copy of the form, along with the bill of sale, in a timely manner to the FAA office in Oklahoma City. Inspector Franklin stated that the helicopter was not registered to Haddock Flying Service until respondent sent the registration form sometime in January 2009. Tr. at 79-80. Inspector Franklin testified that, if the aircraft had contained the pink copy of the registration form when it crashed on December 25, 2008, he would have considered it properly registered.⁷

Both Inspectors Mosher and Franklin further stated that, if an aircraft such as the one at issue has not undergone a condition inspection in the past 12 months, it is considered

⁷ On cross-examination, Inspector Franklin testified as follows:

Q. So if the pink copy were in the aircraft at the time of the accident you would consider that aircraft to be properly registered, wouldn't you?

A. If it were in the aircraft. It was not in the aircraft.

Q. When you got there it wasn't in the aircraft.

A. Well, how could I tell it was in the aircraft before then?

Q. But Mr. Haddock told you in his statement that it was in the aircraft.

A. That's what this statement says, yes.

Tr. at 84.

unairworthy. Inspector Franklin opined that the aircraft had not undergone the required inspection because Mr. Moore, who performed the April 1, 2008 maintenance on the helicopter, did not include in the aircraft logbook the required language, or a similar statement, indicating that the condition inspection had occurred.⁸ Inspector Franklin also identified the

⁸ Regarding the wording that a mechanic must include to indicate that the aircraft has undergone a condition inspection, Inspector Franklin referenced paragraph 20 of the operating limitations, which requires the following statement: "I certify that this aircraft have been inspected on (insert date) in accordance with scope and detail of FAR 43 Appendix D and found to be in a condition for safe operation." Exh. A-1. On this language, Inspector Franklin testified as follows:

Q. You testified that the inspection on April the 6th, 2006 and April the 18th, 2007 conformed to the language of paragraph 20 of the experimental operating limitations. Is that what you said?

A. Yes. They're similarly worded.

Q. They're not exactly worded the way paragraph 20 suggests, are they?

A. They're similarly worded according to what the paragraph states.

Q. And you agree with me that paragraph 20 allows flexibility to the person who performs the inspection to provide a similarly worded statement?

A. What does flexibility mean?

Q. It doesn't have to be exactly the language verbatim as in paragraph 20. Flexibility means that the person who does it has discretion on how they write the inspection, doesn't it?

A. I would disagree with that on the fact that paragraph 20 explicitly gives you the statement to write in the maintenance record. So if you're going to write a similarly worded statement it would have to contain some of the verbiage that's highlighted in bold print in sentence 20. So as far as flexibility, I would say no. There's not much flexibility in this statement.

Tr. at 89-90.

Administrator's Sanction Guidance Table, FAA Order No. 2150.3B (Oct. 1, 2007), and testified that he relied on the Table to recommend a sanction of 90 days. Exh. A-8 at B-25 (sanction range of 30 to 90 days for failure to comply with operating limitation), B-51 (sanction range of 30 to 90 days for operation of unregistered aircraft).

In rebuttal, respondent called Mr. Moore to testify. Mr. Moore stated that he built the aircraft at issue and knew that the operating limitations required a yearly condition inspection. Mr. Moore consistently contended, on direct and cross examination, that he performed a condition inspection on April 1, 2008, even though he did not include explicit language in the aircraft logbook indicating such.⁹ Mr. Moore testified that, in the April 1, 2008 logbook entry, his inclusion of the statement "check comp found to be in airworthy cond return to ser" indicated that he had completed a condition inspection. Tr. at 106-107, 116. Exh. A-3 at 2.¹⁰ Mr. Moore also stated

⁹ When confronted on cross examination with the differences in the wording of the logbook entries from year to year, Mr. Moore, who testified that he had a sixth grade education, responded, "I did do a condition inspection [in April 2008]. I apologize for misverberizing [sic] this. You know, I'm not the best in the world at reading and writing, and that's my mistake not Mr. Haddock's." Tr. at 115.

¹⁰ The logbook entry from April 2006 states "Complete Cond. Insp. Found To Be in An Airworthy cond." Exh. A-3 at 3. The logbook entry from April 2007 states "Comple^t [sic] Condition Inspection Found To Be Airworthy Return To Service." Id.

that he told respondent that he had completed the most recent condition inspection on April 1, 2008. With regard to the registration, Mr. Moore testified that he recalled mailing paperwork to Oklahoma City in order to transfer the registration to respondent.¹¹ Mr. Moore stated that he and respondent placed the pink carbon copy of the registration form in a box in the cockpit of the helicopter.

Respondent also testified on his own behalf. He stated that he had no reason to believe the aircraft was unairworthy, given that Mr. Moore showed him logbook entries for April 2006, April 2007, and April 2008, and characterized the entries as evidence that the requisite condition inspections had occurred. Respondent testified that he relied on Mr. Moore's statement that the aircraft was in an airworthy condition.

Concerning the registration, respondent stated that he recalled completing the registration form with Mr. Moore when he bought the helicopter on December 21, 2008, but that he did not mail it until after the accident.¹² Respondent testified that he believed he fulfilled the registration requirements because he and Mr. Moore placed the registration, including the pink carbon

¹¹ Mr. Moore did not explicitly state what paperwork he sent.

¹² Respondent stated that, at the time of the accident, the entire registration form was "in the box [in the cockpit] because [respondent] had never torn it apart to send in the white copy," (Tr. at 127) and that, after the accident, respondent completed another registration form and mailed it (Tr. at 129-30).

copy, in the aircraft when respondent purchased it.

Respondent's testimony in this regard appears to contradict Mr. Moore's testimony concerning whether anyone mailed in the first registration form; hence, we believe the law judge's resolution of this issue on remand is necessary.

Respondent also called Dirk Frommann and Frank West to testify concerning the registration. Both Messrs. Frommann and West stated that they were present when respondent bought the aircraft from Mr. Moore, and that they observed Mr. Moore and respondent fill out the registration form and place it in the box in the cockpit.¹³ Mr. West stated that he arrived at the accident site shortly after the accident, gathered the papers from the box—including the pink copy of the registration form—and gave them to Inspector Franklin.¹⁴

¹³ The record is unclear concerning which copy of the registration form (the pink carbon copy, or the entire package, which included both the white and pink copies) Messrs. Frommann and West saw Mr. Moore and respondent place in the aircraft.

¹⁴ Mr. West testified as follows concerning the paperwork:

A. I learned that a gentleman from the FAA was going to be coming so I waited around until he got there and [he] and I talked. We both walked out there to the aircraft, looked around, and that's when, you know, we looked at the box and I got everything out of the box and handed it to him. And, you know, basically, you know, he said that, you know, I might -- I might need those so I just, you know, I handed everything to him. That's, you know, basically what happened.

Q. So you gave the pink slip with the other papers to the FAA man?

A. Yes, sir.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he determined that Mr. Moore used the wrong language to indicate that he had completed the inspection in April 2008. Specifically, the law judge stated that, "no correct entry had been made showing that a timely and up-to-date condition inspection had been made pursuant to the requirements of Federal Aviation Regulation 43, Appendix D." Initial Decision at 191. The law judge did not make a specific finding as to whether respondent relied on Mr. Moore's statements to him regarding the condition inspection. The law judge further stated that an owner's intent is not an element of a charge of improper registration, and that, although respondent and his witnesses established that respondent attempted to register the aircraft, "there was no documentation of that registration or the attempts except the testimony of the [r]espondent's witnesses." Id. The law judge did, however, reduce the sanction from 90 days to 60 days, as a result of his belief that respondent had made a "substantial attempt" to register the aircraft.¹⁵ Although the law judge determined that the Administrator's case was "logical, persuasive, and compelling," he did not make an explicit finding concerning the credibility of the witnesses, or regarding the specific evidence that led him to conclude that the Administrator proved by a

¹⁵ Id. at 194. The law judge did not make specific findings as to what facts constituted a "substantial attempt."

preponderance of the evidence that respondent neither registered the aircraft appropriately, nor ensured that a condition inspection had occurred.

On appeal, respondent argues that the law judge erred in concluding that the helicopter was not registered, because it had "temporary authority to operate" at the time of the accident, and that the aircraft had a timely condition inspection, which was documented. Respondent also argues that the law judge erred in allowing Inspector Franklin to opine, as an expert, that respondent had violated the regulations. Finally, respondent contends that the law judge ignored the "undisputed testimony" in the record, and failed to make a credibility determination in reaching his conclusions. The Administrator opposes each of respondent's arguments, and urges us to affirm the law judge's decision.¹⁶

We remand this case to the law judge for clarification. In order for the Board to issue a well-reasoned decision on the merits, the law judge must provide an assessment of the evidence, and an explanation concerning how he weighed the evidence in reaching his decision. The initial decision does not state that the law judge found the Administrator's witnesses more credible than respondent's witnesses, whether obvious contradictions existed in either party's case, and, if there

¹⁶ The Administrator did not appeal the law judge's reduction in sanction.

were contradictions, whether respondent's admissions regarding the registration form were case-dispositive.

The law judge further did not explain how the Administrator proved that the aircraft had not undergone a condition inspection and was therefore unairworthy, when Mr. Moore testified at the hearing that he had ostensibly completed such an inspection that he failed to document properly. If the law judge determined that Mr. Moore's testimony was not credible, he should provide that assessment in his decision. Concerning the requirement that the aircraft undergo a condition inspection, we note that the Administrator argues that the aircraft was unairworthy because it had not been inspected. We remind the law judge, however, that we have long held that the Administrator must prove that the aircraft was unairworthy by a preponderance of the evidence.¹⁷ In cases in which the Administrator alleges that an operator has violated 14 C.F.R. § 91.7(a), we have long held that the standard for airworthiness consists of two prongs: (1) whether the aircraft conforms to its type certificate and applicable Airworthiness Directives; and (2) whether the aircraft is in a condition for safe operation.¹⁸

¹⁷ Administrator v. Van Der Horst, NTSB Order No. EA-5179 at 3 (2005); see also Administrator v. Schwandt, NTSB Order No. EA-5226 at 2 (2006) (it is the Board's role to determine, after reviewing the evidence the Administrator presents, whether the Administrator has met the requisite burden of proof).

¹⁸ Administrator v. Doppes, 5 NTSB 50, 52 n.6 (1985) (citing 49 U.S.C. § 1423(c)); see also Administrator v. Anderson, NTSB

We have recognized that, "the term 'airworthiness' is not synonymous with flyability."¹⁹ In determining whether an aircraft is airworthy in accordance with the aforementioned standard, the Board considers whether the operator knew or should have known of any deviation in the aircraft's conformance with its type certificate.²⁰ In his subsequent decision, the law judge should determine whether the Administrator fulfilled this standard.

With regard to the registration, the law judge appeared to conclude that respondent did not register the aircraft because respondent testified that the white copy of the registration form was not mailed prior to the December 25, 2008 accident. However, the law judge did not make a finding concerning whether the white copy, the pink carbon copy, or all copies of the registration form were in the aircraft following respondent's purchase of it, and whether the presence of any copy would preclude the Administrator from alleging, or alternatively prove

(..continued)

Order No. EA-3976 at 2 (1993); Administrator v. Nielsen, NTSB Order No. EA-3755 at 4 (1992); Administrator v. Copsey, 7 NTSB 1316, 1317 (1991).

¹⁹ Doppes, supra note 18, at 52 n.6.

²⁰ See, e.g., Administrator v. Yialamas, NTSB Order No. EA-5111 (2004); Administrator v. Bernstein, NTSB Order No. EA-4120 at 5 (1994); see also Administrator v. Surratt and Walker, NTSB Order No. EA-5514 at 17-21 (2010) (holding that the Administrator failed to prove that respondents knew or should have known that spoilers were malfunctioning prior to takeoff).

the Administrator's contention, that respondent did not properly register the aircraft. We direct the law judge to make such findings in a decision on remand. If further fact-finding is necessary, the law judge may order additional pleadings or a hearing.

Based on the foregoing, we direct the law judge to provide a decision setting out both facts and application of law to those facts sufficient to allow the Board to perform its review, should either party decide to appeal to the Board the law judge's decision on remand.

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, ROSEKIND, and WEENER, Members 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. * Docket No.: SE-18700

JUDGE FOWLER

DARGAN D. HADDOCK, *

Respondent. *

* * * * *

Strom Thurmond Federal Building
1835 Assembly Street
Courtroom 250
Columbia, South Carolina 29201

Tuesday,
February 23, 2010

The above-entitled matter came on for hearing, pursuant
to Notice, at 11:00 a.m.

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

APPEARANCES:

On behalf of the Administrator:

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On behalf of the Respondent:

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ORAL INITIAL DECISION AND ORDER

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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 Dargan Dewey Haddock from an Order of Suspension issued by the Regional Counsel, Southern Region of the Federal Aviation Administration. The Administrator's Order of Suspension dated September 17th, 2009, seeks to suspend the commercial pilot certificate of Respondent Haddock for a period of 90 days.

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The Administrator's Order of Suspension, as duly promulgated pursuant to the National Transportation Safety Board's Rules of Practice in Air Safety Proceedings, as I mentioned, was issued by the Regional Counsel of the Southern Region of the Federal Aviation Administration.

19

This matter has been heard before this United States Administrative Law Judge and, as is provided by the Board's Rules of Practice, specifically, Section 821.42 of those rules. As the Judge in this proceeding I am given the option to either issue a

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1 duly documented and performed in accordance with Federal Aviation
2 Regulation, 43 Appendix D? The other issue was the registration
3 of the aircraft.

4 There are 13 paragraphs setting forth the allegations
5 and charges by the Administrator in his Order of Suspension of
6 September 17th, 2009. Many of those paragraphs, 13 paragraphs,
7 have been admitted both by the pleadings and by the subsequent
8 testimony and the evidence produced. Those paragraphs I'm going
9 to incorporate by reference without repeating it. Those are
10 paragraphs 1, 2, 3, 5, 8, 9, 10 and 12 of the Administrator's
11 Order of Suspension -- we've had so many Emergency Orders of
12 Revocation in our office I'm prone to say emergency order of
13 revocation, but this is an Order of Suspension.

14 As I mentioned, the Administrator has produced two
15 witnesses, FAA Inspectors Mosher and Inspector Franklin, both of
16 whom have testified quite copiously and voluminously as to the
17 pertinent and salient issues involved in this case. I would have
18 to determine, find, and conclude the Administrator's case has been
19 quite compelling, logical and persuasive.

20 Inspector Franklin and Mosher did an in-depth,
21 exhaustive investigation concerning this case. We've had testimony
22 by the Respondent's witnesses, including the Respondent himself,
23 that, as with life, you're dealing with Christmas week here in
24 2008 where the aforesaid registration or attempted registration of

1 the aircraft is concerned, four days before the unfortunate
2 accident injuring both the Respondent and his passenger.

3 Having reviewed all of the testimony and evidence, it is
4 my determination that the Administrator has successfully proven by
5 a fair and reasonable preponderance of the credible, material,
6 relevant, and probative evidence, all of the allegations set forth
7 in the Administrator's Order of Suspension.

8 There was obviously some misunderstanding by some of the
9 Respondent's witnesses and possibly the former owner of the
10 aircraft -- not the former owner, Mr. David Moore, because he, as
11 he stated, was quite knowledgeable as to what was required for the
12 condition inspection note, but he used the wrong language, to
13 quote him from part of his testimony.

14 Inspector Franklin, as I mentioned, did a very in-depth
15 investigation and it was his determination, as well as Inspector
16 Mosher, that no correct entry had been made showing that a timely
17 and up-to-date condition inspection had been made pursuant to the
18 requirements of Federal Aviation Regulation 43, Appendix D. The
19 Administrator's case, the evidence in that regard, as I mentioned,
20 was quite compelling and persuasive.

21 On the registration, counsel for the Administrator is
22 absolutely correct, intent is not an element involved with
23 registration. However, I cannot reject out of hand, or even in a
24 sense, negate the testimony of Respondent and his witnesses that

1 there was a serious attempt made to register this aircraft as of,
2 I believe it was, December 21st, 2008. However, as you all
3 recall, due to facts and circumstances, there was no documentation
4 of that registration, or the attempts, except the testimony of the
5 Respondent's witnesses.

6 As of January 9th, 2009, as you may recall, Inspector
7 Franklin testified the FAA records in Oklahoma City, or elsewhere,
8 there was no change in the registration of the aircraft. It still
9 was registered to David Moore, once the owner.

10 So ladies and gentlemen, I'm sure you get the drift of
11 my final and ultimate determination as of this time. I will now
12 proceed to make the following specific findings of fact and
13 conclusions of law:

14 As I mentioned, the aforesaid paragraphs 1, 2, 3, 5, 8,
15 9, 10 and 12 have been proven and admitted where the Respondent is
16 concerned, so I'm not going to recite those paragraphs but I am
17 going to start with paragraph 4, which says the above -- it is
18 found the above-described aircraft crashed during approach to
19 landing at Haddock Flying Service airstrip.

20 7. It is found that at the time of the above-described
21 accident the above-described aircraft was still registered to
22 David Moore, the previous owner.

23 11. It is found that an inspection of the aircraft
24 logbook by FAA inspectors for aircraft N75EW revealed that the

1 last completed aircraft condition notice was done on April 18th,
2 2007. The next required aircraft condition notice was due by the
3 end of April 2008 and there was no documentation to that effect.

4 13. It is found that at the time of the described
5 flight, the aforesaid aircraft was not in an airworthy condition
6 by reasons of the discrepancies listed above and which I have just
7 mentioned and alluded to.

8 14. As a result, Respondent violated the following
9 sections of the Federal Aviation Regulations:

10 Section 91.403(a) in that the owner or operator of an
11 aircraft failed to be primarily responsible for maintaining that
12 aircraft in an airworthy condition, including compliance with FAR
13 43, Appendix D, which is required of all experimental aircraft
14 which are bound by the experimental operating limitations, which
15 means that the a CI must be done every 12 months by a owner or
16 operator of the aircraft;

17 Section 91.13(a) in that no person may operate an
18 aircraft in a careless manner so as to endanger the life and
19 property of another. I would say this was careless operation.
20 The Respondent is a very seasoned and experienced pilot with more
21 than 6,000 hours of flight time. He should be -- should have been
22 fully cognizant of what documentation is required every 12 months
23 for this aircraft, being an experimental helicopter aircraft as it
24 was. So that I think this was careless. I will not determine, as

1 has been alluded to, that this was reckless but, of course,
2 Section 91.13(a), holding that there was carelessness is a
3 derivative section based on the other violations that I have
4 stated.

5 Section 47.3(b), no person may operate an aircraft that
6 is eligible for registration under 49 U.S.C. et cetera, et cetera.
7 I'm incorporating the rest of that section by reference.

8 There was a substantial attempt shown by the evidence
9 and documentary exhibits produced by the Respondent to register
10 that aircraft. Unfortunately it didn't come about and I'm going
11 to take that into account in assessing the sanction here.

12 15. My finding, final conclusion and determination is
13 that safety in air commerce or air transportation and the public
14 interest does apparently require the affirmation of the
15 Administrator's Order of Suspension of September 17th, 2009.
16 However, taking into account all of the particular and peculiar,
17 salient and pertinent facts encompassed in this proceeding, it is
18 my determination that the 90-day period of suspension sought by
19 the Administrator be reduced to a period of 60 days suspension of
20 the Respondent's commercial pilot certificate.

21 ORDER

22 IT IS ORDERED AND ADJUDGED that the Administrator's
23 Order of Suspension dated September 17th, 2009, be and the same is
24 hereby modified to a period of suspension of the Respondent's

1 commercial pilot's certificate of 60 days.

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

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7 EDITED ON

8 MARCH 15, 2010

WILLIAM E. FOWLER, JR.

Chief Administrative Law Judge