

SERVED: May 3, 2011

NTSB Order No. EA-5579

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 2nd day of May, 2011

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J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-18994
	v.)	
)	
LEE MIZE,)	
)	
	Respondent.)	
)	
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OPINION AND ORDER

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on December 1, 2010.¹ By that decision, the law judge denied respondent's appeal of the Administrator's suspension order,

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

based on respondent's alleged failure to provide the Administrator with proof of his qualifications to hold a private pilot certificate; specifically, proof of completion of his mandatory biannual flight review (BFR). We deny respondent's appeal.

On October 29, 2009, respondent attempted to take off from Angwin-Parrett Field Airport in Angwin, California, in his Piper PA-28-140 aircraft, but departed the runway and came to rest entangled in a fence approximately 210 feet off the runway. As part of the subsequent accident investigation, FAA aviation safety inspectors sent respondent a letter on November 2, 2009, requesting copies of his airman records. Exh. C-1. Respondent provided the inspectors copies of some of the requested records, but failed to provide proof of his BFR. On November 24, 2009, and again on February 24, 2010, the inspectors sent letters to respondent requesting proof of his BFR. Id.

To maintain currency for a private pilot certificate, 49 U.S.C. § 44709(a)² and the Federal Aviation Regulations (FAR) based upon that statutory section, require airmen have a BFR every 24 calendar months consisting of 1 hour of flight training and 1 hour of ground training with a certified flight instructor

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

(CFI). FAR sections also require both the airman and the CFI to document the BFR in their flight logbooks.

Respondent admits he did not provide evidence of his BFR to the FAA in response to the FAA's request. Respondent instead asserted that his briefcase, containing his logbook, had been behind the front seat of the aircraft during the accident, and was stolen from the aircraft after the accident, rendering him unable to produce his logbook. He informed the investigators he completed his BFR with a CFI named "Jim" in Auburn, California. He later said "Jim" was at Beale Air Force Base and was from Marysville, California. The FAA tracked down two CFIs named "Jim" in the areas around Auburn, Beale, and Marysville, but both stated they had not conducted a BFR for respondent.

Chief Avery Browne, from the Angwin Volunteer Fire Department, was one of the first responders on the scene of the accident. Chief Browne testified that about an hour and a half after the accident, he escorted respondent back to the aircraft to retrieve some of respondent's personal belongings. Since it was nighttime, Chief Browne held his flashlight inside the aircraft to assist respondent. Contrary to respondent's testimony that he did not remove his logbook from the aircraft, Chief Browne testified he witnessed respondent take some papers,

flight charts, and a logbook³ from the aircraft. Later that evening, Chief Browne again escorted respondent to the aircraft. On that trip, respondent removed additional personal items from both of the front seats and behind the seats. Chief Browne then ensured no personal items were left in the aircraft and secured it for the evening. At no time did Chief Browne see a briefcase in the aircraft, nor did he see respondent remove a briefcase.

On November 18, 2010, the Administrator issued an emergency order suspending respondent's private pilot certificate until such time as he provided proof of his BFR pursuant to 49 U.S.C. § 44709.⁴ Respondent appealed the order and the case proceeded to hearing before the law judge on December 1, 2010.

The law judge denied respondent's appeal, finding he failed to provide the Administrator with proof of his BFR, and,

³ Chief Browne recognized the book as a logbook from his personal experience flying and from his 6 years in the United States Army working as an aeromedical aviation officer responsible for aircraft.

⁴ Respondent subsequently waived the expedited procedures normally applicable to emergency proceedings. The Administrator originally charged respondent on July 15, 2010, in a non-emergency proceeding, believing respondent's third-class medical certificate had expired, thus making him ineligible to exercise the privileges of his private pilot certificate. The Administrator subsequently learned respondent had been reissued his third-class medical certificate on July 9, 2010. At that time, the Administrator moved to withdraw the July 15, 2010 order and complaint from NTSB Docket No. SE-18907, without prejudice. The Administrator then reinstated the order at issue here as an emergency proceeding.

therefore, held the Administrator was justified in suspending respondent's private pilot certificate pending compliance with the Administrator's request. The law judge concluded the Administrator had a reasonable basis for requesting production of the logbook, since respondent was involved in an aircraft accident. He further stated respondent failed to provide the requested documentation as required. The law judge found Chief Browne's testimony, that he saw respondent remove the logbook from the aircraft, more credible than respondent's self-interested testimony that the logbook was stolen. He concluded the public interest in air transportation and safety required indefinite suspension of respondent's certificate pending the Administrator's receipt of the requested documentation.

Respondent subsequently appealed the law judge's decision. On appeal, he raises several issues. He asserts the law judge erred in finding he failed to comply with the Administrator's request to provide documentation, as he produced his medical and pilot certificates as well as documentation on the annual inspection for his aircraft. He contends the law judge denied him due process and a fair hearing by not permitting him to testify in narrative form, not allowing him to introduce certain exhibits, not permitting his wife to ask questions, not changing the venue of the hearing from San Francisco to Sacramento, and not permitting him a delay to hire an attorney. Finally,

respondent challenges the impartiality of the law judge. The Administrator contests each of these arguments.

We previously have acknowledged that, in cases involving the competency of an airman to hold a certificate, the Administrator need only demonstrate a reasonable basis exists for questioning the airman's competence.⁵ We continue to analyze appeals concerning competency to hold a certificate under this standard of reasonableness. In this case, we find the law judge properly determined the Administrator's request that respondent produce a copy of his logbook showing he completed his BFR was reasonable. In cases involving evidence of compliance with the BFR, we have found no unfairness in placing the burden of production on the pilot because the pilot, rather than the FAA, will have easier access to information pertaining to an alleged flight review including, in most cases, memory of the event.⁶ In this case, respondent admitted he failed to provide the FAA with a copy of his completed BFR. Thus, the record clearly establishes the Administrator has a reasonable basis for questioning respondent's qualifications.

In addition, as stated above, the law judge did not credit

⁵ Administrator v. Occhione, NTSB Order No. EA-5537 at 13 (2010); see also Administrator v. Santos and Rodriguez, NTSB Order No. EA-4266 at 4 (1994), and Administrator v. Wang, 7 NTSB 752 (1991).

⁶ See Administrator v. Futyma, NTSB Order No. EA-4141 at 9 n.11 (1994).

respondent's testimony concerning his misplaced briefcase. 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.⁷ With regard to the law judge's credibility determinations in this case, respondent has not shown the determinations were arbitrary, capricious, or contrary to the weight of the evidence. After a careful review of the record, we agree with the law judge's credibility determinations. The law judge found Chief Browne, who was completely disinterested in the outcome of the case, more credible than respondent. Chief Browne's testimony was critical in rebutting respondent's testimony that his logbook, contained in his briefcase, was stolen from the scene of the accident.

With regard to respondent's due process arguments, we do not find the law judge violated respondent's right to a fair hearing. We previously have held a respondent has been afforded due process in cases where a respondent has had the opportunity to present and cross-examine witnesses at an administrative hearing.⁸ We also have long held law judges have significant

⁷ 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)).

⁸ See Administrator v. Riggs, NTSB Order No. EA-5436 at 15 (2009)

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.⁹

After careful consideration of respondent's due process arguments in light of our precedent, we have determined they lack merit. The law judge permitted respondent to testify in narrative form. Tr. 23. While the law judge asked respondent some questions, the law judge was permitted to do so under the Board's Rules of Practice. Contrary to respondent's assertions, the hearing transcript shows respondent did not try to introduce exhibits during the hearing. Similarly, respondent has not established the law judge violated respondent's rights when the law judge prevented respondent's wife from asking questions during the hearing, since respondent cannot show how questioning

(..continued)

(citing Administrator v. Corredor, NTSB Order No. EA-5322 at 9 (2007), and Administrator v. Nowak, 4 NTSB 1716 (1984)).

⁹ 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); Lackey v. FAA, 386 Fed. Appx. 689, 2010 WL 2781583 (9th Cir. 2010). 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).

by his wife would have changed the outcome of the case.

Aside from broad statements about a fair hearing, respondent's motion for a change in venue identifies only two specific potential prejudicial matters he relates to venue: the opportunity to access witnesses and proximity to his home.¹⁰ Even then, he fails to identify, either in pleadings or at the hearing, what witness or witnesses were not available to him, and fails to articulate any way he was harmed by the selection of San Francisco, less than 100 miles from his choice of Sacramento, as the venue. The law judge's selection of San Francisco as the hearing location did not constitute an abuse of discretion, and we find no error.¹¹

Respondent also claims he needed a delay to hire an attorney, but at no time during the hearing did he raise this

¹⁰ We note two procedural abnormalities regarding this motion simply to ensure the record is clear. First, respondent actually filed this motion in SE-18908, also currently pending before the Board. This emergency proceeding, SE-18994, was issued on November 18, 2010. Second, respondent filed this motion for a change of venue on July 27, 2010, prior to the law judge actually setting a venue and presumably in response to the Administrator's July 23, 2010 filing requesting Los Angeles as the venue for the hearing. Based upon the input from both parties, the law judge ultimately selected San Francisco as the venue on September 10, 2010.

¹¹ See Administrator v. Konop, NTSB Order No. EA-5299 at 9 (2007) (finding no error in the law judge holding the hearing in San Francisco, rather than Sacramento, and citing 49 C.F.R. § 821.37(a) for the following standard: "the law judge, in setting the place of the hearing, must give 'due regard' to the location of the subject incident, the convenience of the parties and their witnesses, and the conservation of Board funds").

issue with the law judge. At the hearing, he only informed the law judge he was proceeding pro se, and we note it is not uncommon for respondents to proceed pro se in pursuit of their appeals. We have previously held a respondent has no right to counsel.¹² Overall, we do not find respondent's arguments concerning alleged due process violations persuasive.

Finally, respondent's argument that the law judge was biased is equally unavailing. We have held, in order to disqualify a law judge for bias or prejudice, "the bias or prejudice must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge has learned from his or her participation in the case."¹³ We have long rejected contentions that a law judge decided a case or issued certain evidentiary rulings based on bias when the party alleging such bias presents nothing more than conjecture in support of the assertion.¹⁴ While respondent is disappointed

¹² See generally Administrator v. Bakhit, NTSB Order No. EA-5489 (2009); Administrator v. Nadal, NTSB Order No. EA-5308 (2007). See also Administrator v. Adcock, NTSB Order No. EA-4507 (1996); Administrator v. Olsen and Nelson, NTSB Order No. EA-3949 (1993).

¹³ Administrator v. Lackey, NTSB Order No. EA-5419 at 11 (2008), aff'd Lackey v. FAA, 386 Fed. Appx. 689, 2010 WL 2781583 (9th Cir. 2010). See also Administrator v. Steel, 5 NTSB 239, 243 n.8 (1985).

¹⁴ See, e.g., Administrator v. Nickl, NTSB Order No. EA-5287 at 7-8 (2007) (rejecting motion to disqualify law judge based on unsupported contention that law judge was biased). See also

with the outcome of his case, we find the law judge attempted to provide guidance and assistance to respondent to the extent the law judge is permitted to do so under the Board's Rules of Practice. See Tr. 12, 17, 20. Although the law judge engaged in some questioning of respondent, we find the law judge did so in the interest of clarifying the record, not due to any personal bias, and the law judge properly attempted to limit respondent's case to evidence relevant to the hearing. We have long allowed law judges to engage in such inquiries.¹⁵ We recognize at times on the record the law judge does appear brisk in his responses to respondent; however, we find no prejudice to respondent, as the overwhelming weight of the evidence in this case, combined with respondent's admissions, establishes the truth of the Administrator's allegations.

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 private pilot certificate, pending respondent's

(..continued)

Administrator v. Steel, 5 NTSB 239, 243 n.13 (1985) (finding no bias warranting disqualification where the law judge repeatedly, during the hearing, yelled and banged her fist, ridiculed the respondent and addressed him contemptuously and sarcastically).

¹⁵ See, e.g. Administrator v. Simmons, NTSB Order No. EA-5275 at 9-10 (2007) (citing 49 C.F.R. § 821.35(b) and Administrator v. Kachalsky, NTSB Order No. EA-4847 at 3 n.4 (2000)).

production of documentation of his biannual flight review 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.

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-18994

LEE MIZE, * JUDGE GERAGHTY

Respondent. *

* * * * *

U.S. Tax Court
Courtroom 2-1350, 2nd Floor
450 Golden Gate Avenue
San Francisco, California 94102

Wednesday,
December 1, 2010

The above-entitled matter came on for hearing, pursuant
to Notice, at 9:00 a.m.

BEFORE: PATRICK G. GERAGHTY,
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

ADMINISTRATIVE LAW JUDGE GERAGHTY: This has been a proceeding before the National Transportation Safety Board on the Appeal of Mr. Lee Mize, hereinafter Respondent, from an Emergency Order of Suspension Pending Compliance. That Order of Suspension serves herein as the Complaint and was filed on behalf of the Administrator, Federal Aviation Administration, herein the Complainant.

The matter has been heard before this Judge and, as required in emergency proceedings, I am issuing an oral decision, bench decision in the matter.

Pursuant to Notice, this matter came on for trial on December 1st, 2010, in San Francisco, California. The Complainant was represented by his Staff Counsel, Lindsay Nakamura, Esquire, and Naomi Tsuda, Esquire, both of the Federal Aviation Administration, Western Pacific Region Office.

The Respondent was present at all times and elected to represent himself pro se during the proceeding.

1 I have considered all of the evidence, both oral and
2 documentary, and all of the pleadings filed by the respective
3 Parties. In discussing the evidence, I restrict myself to that
4 which leads to the conclusion I have reached herein. Evidence
5 which I do not specifically mention is viewed by me as not
6 materially affecting the outcome of the decision or as being
7 merely corroborative of that which I do mention.

8 AGREEMENTS

9 By pleading, it was agreed that there was no dispute as
10 to the allegations contained in the Complaint in Paragraph numbers
11 1 through and including 9. Accordingly, those matters, as stated
12 in the Complaint, are taken as have been established for purposes
13 of this Decision.

14 DISCUSSION

15 As noted, the complaint herein seeks to suspend the
16 Respondent's Private Pilot Certificate for an indefinite period,
17 which is pending his compliance with the request for production of
18 certain records. And in this particular case, that is evidence
19 acceptable to the Complainant, the Administrator of the Federal
20 Aviation Administration, that the Respondent at the time of the
21 admitted aircraft accident that occurred on October 29th, 2009,
22 when the Respondent was operating a Piper 28-140 aircraft as
23 pilot-in-command, that he, the Respondent, had a current and valid
24 biennial flight review (BFR).

25 In this type of case, the Board looks at three items in

1 evaluating the particular incident. That is: One, was there a
2 reasonable basis for the request?

3 In this instant case, admittedly there was an aircraft
4 accident on the evening of October 29th, 2009. Respondent was
5 operating as pilot-in-command and was involved in an accident that
6 caused, apparently, substantial damage his personally-owned
7 aircraft. The aircraft departed the runway and sustained damage
8 and ended up entangled in a fence off the active runway at the
9 airport.

10 That, in my view, is sufficient grounds for the
11 Administrator to request that the Respondent furnish documentation
12 as to the airworthiness of the aircraft, if such request is made,
13 production that he, in fact, has a current and valid medical
14 certificate or pilot certificate, and none of which are at issue
15 here. But what is at issue is that there also is a valid request
16 to demonstrate that at the time of the incident the Respondent had
17 a current and valid biennial flight review, as required under the
18 Federal Aviation Regulations.

19 So, the evidence, and I so find, is that there was a
20 reasonable basis and that the request itself was reasonable, and
21 is reasonable.

22 The issue, therefore, comes down to whether or not the
23 Respondent has complied with this request. That is the thrust of
24 the evidence offered and received during this proceeding and in
25 the pleadings filed.

1 Complainant called Aviation Safety Inspector,
2 Operations, General Aviation, Mr. Schuchbauer. He has indicated
3 he knew about the incident and, in fact, had both conversations on
4 the telephone and by correspondence with the Respondent. However,
5 he had no knowledge of the Respondent prior to this incident. So
6 there's no evidence of any prior altercations or bias that would
7 have appeared in this case. There's no such evidence.

8 The witness indicated that it is required under the
9 Regulations that there be an entry in the pilot logbook showing
10 that within the previous 24 calendar months that the Respondent
11 had accomplished the required biennial flight review. The
12 biennial flight review, as specified in the Regulation, requires
13 one hour of flight time and one hour of ground school to be
14 administered by a Certificated Flight Instructor.

15 The Regulations and also the Advisory Circulars
16 pertaining to BFRs clearly point out that there should be an
17 endorsement in a pilot's logbook, of the individual receiving the
18 review; and also as a Certificated Flight Instructor, the Flight
19 Instructor is required to keep his own record. So the Flight
20 Instructor would have a record in his logbook, or whatever
21 document he is using to keep track of instruction that that
22 particular instructor is giving, so there are at least two places
23 where endorsements or recordations of the accomplishment of the
24 required BFR, biennial flight review, had, in fact, been
25 accomplished or done. And this witness did testify to that

1 general effect.

2 As to the evidence that the Respondent had given to the
3 Inspector, on the testimony is that the Respondent indicated that
4 the documents apparently had been taken from his aircraft after
5 the accident and that, therefore, the Respondent did not have
6 access to any records or documents which he could furnish to the
7 FAA to establish that he had, in fact, a current BFR. As to the
8 Flight Instructor, the only information that the Respondent gave
9 to the FAA was that it was with a Flight Instructor whose first
10 name was probably or possible "Jim" or "James" in the general area
11 of Auburn, California.

12 Mr. Schuchbauer indicated that he checked the database
13 in the Flight Standards District Office -- and all Flight
14 Standards District Offices keep record of the active flight
15 instructors operating within that particular FSDO's area. There
16 was no such record of any information with the name of "Jim or
17 "James", according to this witness, as being a Flight Instructor
18 in that area.

19 The witness also indicated he spoke to at least two
20 other Flight Instructors in the Auburn and Marysville area,
21 indicating that Auburn was a tight-knit flight instructor
22 community and that no one there knew of any Flight Instructor with
23 the first name of "Jim". So at least there is testimony that the
24 FAA made efforts to corroborate or confirm the testimony or
25 information that the Respondent did furnish.

1 The witness also indicated that at least three letters
2 were sent to the Respondent and, on the evidence, that the
3 Respondent, he did respond to the letters, so they weren't
4 ignored. But even though he responded to the letters, he did not,
5 on the evidence, furnish documentation of accomplishment of a
6 current BFR.

7 On cross-examination, the witness indicated that he had,
8 in fact, spoken with the Respondent and that in those
9 conversations the Respondent had, in fact, informed
10 Mr. Schuchbauer that he, the Respondent, had met "Jim" at the
11 Auburn Airport. That really has not been contested.

12 That was the Complainant's case in chief. And,
13 therefore, the case went forward on the testimony of the
14 Respondent.

15 The Respondent testified on his own behalf. He
16 indicated he had done everything he could with respect to
17 responding to the request made by the FAA, again, stating that he
18 had answered all of the letters. However, it was apparent on his
19 testimony that his logbooks and other personal documents are
20 usually carried in the aircraft. The aircraft records, I take it,
21 that being all maintenance records, also a GPS and a cell phone
22 were also in the aircraft, and that they were there when the
23 Respondent left the scene.

24 They were left in the aircraft and that subsequently,
25 the following day, in response to an inquiry from the FAA, he gave

1 permission that the FAA inspectors could check the aircraft, and
2 that the FAA called back and said that none of the items which
3 I've just enumerated were, in fact, in the aircraft. So it is the
4 Respondent's position that the documentation that he would have
5 available has been taken or stolen and he has no way of furnishing
6 other information.

7 Mr. Clayton Mize is the older brother of the Respondent.
8 He was at the airport on the night in question, apparently had
9 driven both Mr. Lee Mize and Mr. Lee Mize's wife to the airport on
10 that particular evening. According to Mr. Clayton Mize, it was
11 "really dark". He had, on his testimony, never been at the
12 airport before. He gave testimony which was not really clear as
13 to what he observed, and there was never any foundational
14 testimony as to exactly where Mr. Clayton Mize was, what he could
15 see. It was "really dark". There was no foundation to establish
16 that he really could see anything, other than what he might have
17 observed subsequently when everybody was inside of a car. The
18 testimony did not add anything of relevance to this resolution.

19 Complainant offered a rebuttal case and he called a
20 Mr. Avery Browne. He is with the California Highway Patrol. He's
21 been with the Highway Patrol for 16 years. He is also the Chief
22 of the Fire Department and has been with the fire department --
23 and I think it's Angwin Fire Department -- and has been with them
24 30 years, as I understood it, and he is a Captain with the Highway
25 Patrol and about to be promoted to another layer.

1 He indicated that on the evening in question, October
2 29th, 2009, he was, along with two other Officers, on duty that
3 evening and was called out and responded to the accident scene.
4 He indicated he was the first responder. He was in the first
5 vehicle. There was an ambulance and then other fire equipment
6 following. When he got to the scene, he met the Respondent and
7 his wife. He indicated that he directed them to medical personnel
8 to have the Respondent and his wife checked out for any possible
9 injuries and, apparently, fortunately, neither the Respondent nor
10 his wife sustained any significant injuries.

11 As to Chief Browne's background -- he indicated after he
12 secured the aircraft at the accident scene and taped off the crash
13 area because there was fuel leaking, he indicated that he had
14 experience in handling this type of incident and he listed three
15 different things. One, as Fire Chief, he took incident and
16 accident scene management, I think with Japan Airlines. He was
17 also in the U.S. Army for six years and was an Aeromed Officer, I
18 believe, at Fort Lewis. Chief Browne is also a flight nurse and
19 apparently flies with Highway Patrol helicopters and also served
20 in Iraq and was an Air Ops Officer there. So, as he also
21 testified, subsequently, he was well positioned to know what he
22 was looking at, at the scene with respect to the aircraft and also
23 knows what a logbook is. As he indicated when he took ground
24 school, they gave him a logbook, so he knows what a logbook is.

25 He indicated that he arrived on the scene at about 7:36

1 p.m. and that, as I indicated, secured the scene. He detailed the
2 damage to the aircraft. Most significant to me was that there was
3 substantial fuel leaking and, therefore, the aircraft did have to
4 be screened by itself for control. The fire personnel were in
5 full protective gear because of the possibility of flash fire,
6 heated metal or spark with the spilled fuel.

7 In any event, about an hour and a half after the arrival
8 on the scene, the Respondent requested that he be allowed back to
9 the aircraft so that he could retrieve personal property. Chief
10 Browne indicated that he personally escorted the Respondent back
11 to the aircraft, allowed him to enter through the passenger door
12 on the aircraft, while Chief Browne held a flashlight to
13 illuminate the interior of the aircraft so that the Respondent
14 could see what he was doing attempting to retrieve the items.

15 Chief Browne stated that he personally observed the
16 Respondent retrieving items from the interior of the aircraft.
17 And he listed those as papers, flight charts, and a logbook. Also
18 a dark-colored binder. And that was on the first trip. It turns
19 out there was a second visit to the aircraft, which Chief Browne
20 also took part in, and he testified that the Respondent did take
21 items both from the front portion of the aircraft compartment and
22 by leaning over the back of the seats, the front seats, the pilot
23 and passenger seat, front passenger, removed items from the back
24 seats or back area of the aircraft compartment.

25 Subsequently, Chief Browne and his crew remained at the

1 scene for about another hour and a half and prior to leaving, they
2 taped off the area around the aircraft. He also indicated that
3 there were two gates that were locked and secured to prevent
4 access for any vehicles that would go up along -- apparently
5 there's a dirt road that skirts around the perimeter of the air
6 field. And he indicated that those were locked and secured before
7 they left.

8 And, lastly, Chief Browne indicated that prior to this
9 incident he had no knowledge of the Respondent. And, again, there
10 is simply no evidence that Chief Browne has any animosity towards
11 the Respondent or anything to gain or lose in giving his testimony
12 today.

13 That, to me, is the pertinent evidence in the case. I
14 have indicated the evidence does show that there is a reasonable
15 basis and a reasonable request for production, particularly by the
16 Respondent of evidence of a current and valid biennial flight
17 review at the time of the occurrence of this incident. The
18 evidence also, to me, shows that the Respondent has not furnished
19 such satisfactory evidence to the Administrator. And it is the
20 Administrator of the Federal Aviation Administration who
21 determines what is or is not satisfactory evidence.

22 The Board has held the burden of proving that the
23 individual is current and qualified, both holding a valid medical
24 certificate, for example, or a current and valid biennial flight
25 review, rests with the particular pilot. And in this case, the

1 Respondent. And that is reasonable, as the Board has observed, as
2 it is the individual pilot who is in the best position to furnish
3 proof as to his qualifications. So it's obviously that particular
4 individual who should know as a minimum when, where, and with whom
5 he accomplished the biennial flight review. He might not know the
6 exact date, if it was April 15th, but it's reasonable to assume
7 that an individual would know that he accomplished a biennial
8 flight review in such-and-such year and such-and-such month,
9 where, what airport, and with whom.

10 Part of that is also based upon the fact that under the
11 biennial flight review requires two hours. You have an hour of
12 ground school and an hour of flight time. So you're in the
13 company of this flight instructor for an hour and a half to two
14 hours. If you're really good, maybe it doesn't take the full two
15 hours. Here there's simply no evidence that anything was actually
16 accomplished other than the Respondent saying that it was done by
17 some individual by the name of "Jim".

18 As to the rationale that the information cannot be
19 furnished to the Administrator because documentation was taken
20 from his aircraft, stolen, in my view, the evidence does not
21 support that. That is a credibility determination. Here, I have
22 observed the demeanor of the witnesses, the Respondent, and
23 particularly Chief Browne, who has no interest personally in this
24 case or no animosity towards the Respondent, as shown in this
25 record. He has nothing to gain. On the other hand, the

1 1. The Emergency Order of Suspension Pending Compliance
2 is hereby affirmed as issued.

3 2. The Respondent's Private Pilot Certificate is
4 suspended pending his compliance with the request of the
5 Administrator to produce the requested records in a form
6 acceptable to the Administrator.

7 Entered this 1st day of December 2010, at San Francisco,
8 California.

9

10 Edited on

PATRICK G. GERAGHTY

11 December 10, 2010

Administrative Law Judge