

SERVED: May 5, 2011

NTSB Order No. EA-5582

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 May, 2011

_____)	
J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19057
v.)	
)	
BENJAMIN WARD LEDWELL,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

Respondent appeals the oral initial decision of
Administrative Law Judge William R. Mullins, issued April 12,
2011.¹ By that decision, the law judge determined the

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

Administrator proved respondent violated 14 C.F.R. § 61.15(e)² and 67.403(a)(1).³ The law judge denied respondent's appeal of the Administrator's emergency order,⁴ in which the Administrator revoked respondent's commercial pilot, certified flight instructor (CFI), and second-class medical certificates, and any other certificates respondent holds. We deny respondent's appeal.

On September 11, 2008, Officer Chris Estes of the Texarkana Police Department in Texarkana, Arkansas, stopped respondent for a traffic violation. When Officer Estes approached respondent's vehicle, he smelled an odor of alcohol and observed respondent's eyes were bloodshot and his speech was slurred. Officer Estes asked respondent to step out of the car and to perform various field sobriety tests, which respondent then failed. Respondent refused to take a breathalyzer test. At that point, Officer Estes arrested respondent, read respondent his rights,

² The pertinent portion of § 61.15(e) provides that, "[e]ach person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division ... not later than 60 days after the motor vehicle action."

³ The pertinent portion of section 67.403(a)(1) prohibits a person from making fraudulent or intentionally false statements on an application for a medical certificate.

⁴ This case proceeds pursuant to the Administrator's authority to issue immediately effective orders under 49 U.S.C. §§ 44709 and 46105(c), and in accordance with the Board's Rules of Practice governing emergency proceedings, codified at 49 C.F.R. §§ 821.52–821.57.

took him to the police station, and booked him for driving while intoxicated (DWI).

Attorney John Crisp obtained a plea agreement for respondent in the DWI proceeding. The prosecuting attorney agreed to dismiss the DWI charge in exchange for respondent's plea of guilty to reckless driving. Mr. Crisp testified he believed the plea agreement also included an agreement to dismiss the violation of implied consent charge; however, the court order shows respondent pleaded guilty and was convicted of both violation of implied consent and reckless driving on June 2, 2009.⁵ Exh. A-4 at 16.

On November 23, 2010, respondent completed an application for a second-class medical certificate. On the application, he indicated "no" in response to question 18v, which inquires as follows:

HAVE YOU EVER IN YOUR LIFE ... HAD ... ANY OF THE FOLLOWING? Arrest, Conviction, and/or Administrative Action History ... History of (1) any arrest(s) and/or conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any arrest(s), and/or conviction(s), and/or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an educational or a rehabilitation program.

⁵ Under implied consent, in Arkansas, an individual is deemed to consent to a breathalyzer test if suspected of DWI. Since respondent refused the breathalyzer test, the prosecuting attorney charged him with a violation of implied consent.

Exh. A-1 at 2. Respondent admitted he read question 18v, and filled out and signed the application. Respondent asserted he indicated "no" for several reasons: he did not think reckless driving was an alcohol-related conviction, and he was not aware that he was convicted for a violation of implied consent or that he was arrested on the evening of September 11, 2008. Tr. 100-102.

FAA Investigator Brenda Smith found respondent's name when she ran a search of the National Driving Registry for negative driving histories. She opened an investigation after she confirmed respondent answered "no" on question 18v of his medical application and had not reported his motor vehicle action to the FAA within 60 days of the action. She sent respondent a letter of investigation dated January 10, 2011. Exh. A-6. In his response to the letter, respondent admitted he was arrested and had an alcohol-related suspension or revocation, but stated he did not have an alcohol-related conviction. Exh. A-7.

The Administrator issued an emergency revocation order, which became the complaint in this case, on March 9, 2011. The complaint alleged respondent submitted an application for a second-class airman medical certificate on November 23, 2010, certified the information he provided on the application was complete and true, and checked "no" in response to question 18v

on the application concerning arrests, convictions, and/or administrative actions. The Administrator's complaint stated, as a result of this certification, respondent received a second-class medical certificate. However, the complaint alleged respondent falsified his response to the question at issue. Exh. A-1 at 2. The complaint further alleged, on or about September 11, 2008, respondent was arrested incident to an "alcohol related motor vehicle offense" (Compl. at ¶ 2), and, on or about October 11, 2008, the Department of Finance and Administration within the state of Arkansas suspended respondent's driving privileges (Compl. at ¶ 3). The complaint stated respondent's answer of "no" to question 18v was not correct, and was fraudulent or intentionally false; and respondent violated § 61.15(e) because he did not report his motor vehicle action to the FAA within 60 days. Respondent appealed the order and the case proceeded to hearing before the law judge on April 12, 2011.

At the conclusion of the hearing, the law judge issued an oral initial decision. After providing detailed findings of fact based upon the testimony, the law judge found respondent's testimony not credible. He specifically stated:

I just can't assess any credibility to the [r]espondent's comment that he just didn't understand that question: Any arrest for alcohol-related offenses. I mean, this wasn't just some little stop and have coffee with a policeman out there on that

road ... I mean, he was placed in the back of the patrol car. He was taken downtown. He was not incarcerated.

And that event in and of itself was so dramatic in anybody's life and particularly someone—and apparently this is a first offense for him. And then to come and say that he had never been arrested is just not credible.

Initial Decision at 151-52. As a result of this credibility finding, the law judge determined respondent's answer to question 18v was incorrect, and resulted from an intentional falsification of the medical application. The law judge concluded the public interest in air transportation and safety required revocation of respondent's airman certificates for violations of 14 C.F.R. §§ 67.403(a)(1) and 61.15(e).

Respondent subsequently appealed the law judge's decision. On appeal, he raises several issues. He contends the law judge erred in admitting Exhibit A-3, the FAA Medical Bulletin, and Exhibit A-4, certified copies of documents from the state of Arkansas. Respondent also challenges the sufficiency of the evidence that he was arrested. Respondent further asserts the law judge erred in finding respondent's refusal to submit to a breathalyzer served as a basis for a charge or conviction. Finally, respondent argues since he has not yet received the hearing transcript, he is entitled to raise additional issues at a later date. The Administrator disputes each of respondent's arguments, and urges us to affirm the law judge's decision.

Respondent asserts the law judge erred in admitting Exhibit A-3 because it is hearsay. At the hearing, respondent argued Exhibit A-3 was duplicative of the requirements for medical examinations under the Code of Federal Regulations and raised a hearsay objection to the document. Tr. 20. In response, the Administrator's counsel stated he was introducing the document to support the complaint's alternative violation of 14 C.F.R. § 67.403(c)(1).⁶ Tr. 20-21. 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.⁷ Hearsay is admissible in administrative

⁶ Charging in the alternative, the FAA alleged respondent violated § 67.403(c)(1) if the law judge found no violation of § 67.403(a)(1). Section 67.403(c)(1) provides that the making of an incorrect statement in support of an application for a medical certificate may serve as a basis for suspending or revoking a medical certificate.

⁷ 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 cross-examination of FAA witness, because witness was central to Administrator's case and ruling was therefore prejudicial).

adjudications.⁸ Although hearsay is admissible at our hearings, a law judge must exercise discretion in determining the appropriate weight to afford it. In this case, the law judge admitted Exhibit A-3 over respondent's hearsay objection. Assuming, arguendo, this evidentiary ruling amounted to an abuse of discretion, we find no prejudice to respondent. As the law judge found a violation of § 67.403(a)(1), he did not reach the question of whether respondent violated § 67.403(c)(1), and thus, did not rely on Exhibit A-3 in his decision.

Respondent also contends the law judge erred in admitting Exhibit A-4 on the basis of lack of proper foundation. We first note, when the law judge specifically asked respondent about this exhibit, respondent's counsel did not object to its admission. Tr. 22-23. Since respondent did not preserve this issue for appeal by objecting to the exhibit, the issue is waived.⁹ Further, Investigator Smith obtained a certified copy of the records from the state of Arkansas and the Administrator laid the foundation for the document through Investigator Smith's testimony. Therefore, even if respondent had made a timely objection to the exhibit, the law judge would

⁸ 49 C.F.R. § 821.38; see, e.g., Administrator v. Grimmatt, NTSB Order No. EA-5541 at 8 n.8 (2010), Administrator v. Branum & Alford, NTSB Order No. EA-4849 at 7 (2000).

⁹ Administrator v. Deville, NTSB Order No. EA-5055 at 6 (2003).

have committed no error in admitting it. With respect to both exhibits, respondent has neither established that the law judge abused his discretion, nor demonstrated the law judge's alleged errors resulted in prejudice.

Throughout the hearing, respondent asserted he was not arrested on the evening of September 11, 2008, and thus, did not need to disclose the incident on his medical application. The law judge found respondent's testimony in this regard not credible. Initial Decision at 151. 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.¹⁰ We agree with the law judge's credibility determination in this case. The evidence clearly showed respondent was arrested for an alcohol-related offense. Officer Estes testified he smelled alcohol on respondent's breath. He observed respondent had bloodshot eyes, slurred his speech, and failed the field sobriety tests. Officer Estes read respondent his rights and placed him under arrest. Respondent even testified he was placed in the back of the police car and taken to the police station where he had to fill out paperwork. Given the evidence presented at the

¹⁰ 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)).

hearing, we do not find the law judge's credibility finding that respondent knew he had been arrested to be arbitrary, capricious, or contrary to law.¹¹

We further find meritless respondent's contention that, contrary to the law judge's findings, "[respondent's] field refusal [of the breathalyzer test] did not form a basis for a change [sic] or conviction for refusal to submit." Appeal Br. at 2. At the hearing, the law judge made no determination as to whether respondent violated Arkansas's implied consent law. Rather, the law judge relied on the certified copy of the court order, which states, "the Court finds [respondent] not guilty of DWI—1st Offense and guilty of Reckless Driving and Violation of Implied Consent," in concluding respondent violated §§ 67.403(b) and 61.15(e). Exh. A-4 at 16. To the extent, in raising this issue, respondent seeks to relitigate his Arkansas criminal conviction for the violation of implied consent, the Board is not the proper venue for such action. Furthermore, notwithstanding respondent's conviction for the violation of implied consent, we note the Administrator's evidence supporting

¹¹ To the extent respondent argues the law judge erroneously considered Exhibit A-4 in determining respondent was arrested, we find the testimony of Officer Estes and respondent sufficiently support the conclusion that respondent was arrested on the evening of September 11, 2008.

the § 67.403(a)(1) violation was sufficient based solely on respondent's failure to disclose his alcohol-related arrest.

As to respondent's contention that he is entitled to raise additional issues at a later date, there is no support for this argument. In emergency cases, our rules specifically provide that, "[t]he time limitations for the filing of documents respecting appeals governed by this subpart will not be extended by reason of the unavailability of the hearing transcript."¹² Finally, our rules do not permit respondent to reserve the right to raise additional issues on appeal.¹³

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 revocation of respondent's commercial pilot, CFI, and second-class medical certificates, and any other certificates respondent holds, is affirmed.

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

¹² 49 C.F.R. § 821.57(a).

¹³ See 49 C.F.R. § 821.48(b)(3) stating, "[a]ny error contained in the initial decision which is not objected to in the appeal brief may be deemed waived."

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-19057

JUDGE MULLINS

BENJAMIN LEDWELL, *

Respondent. *

* * * * *

NTSB Courtroom
624 Six Flags Drive, Suite 150
Arlington, Texas

Tuesday,
April 12, 2011

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

BEFORE: WILLIAM R. MULLINS
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

This has been a proceeding before the National Transportation Safety Board, held here in Arlington, Texas this 12th day of April 2011. The matter was on for hearing on the appeal of Benjamin Ward Ledwell from an Emergency Order of Revocation that has revoked all of his airman certificates for alleged intentional falsification on an application for a medical.

The Order of Revocation serves as the complaint in these proceedings and was filed on behalf of the Administrator through the Regional Counsel's Office at the Mike Monroney Aeronautical Center in Oklahoma City.

The matter has been heard before me, William R. Mullins. I'm an Administrative Law Judge, and as is provided by the Board's Rules and required by the Board's Rules, I will issue a bench decision at this time.

The Administrator was present throughout these proceedings and represented by Mr. James M. Webster, Esq., of the Aeronautical Center Counsel's Office. The Respondent was present

1 throughout these proceedings and represented by his counsel,
2 Mr. Gary Evans of the law firm of Coats & Evans of The Woodlands,
3 Texas.

4 As I said, the matter came on for hearing here in
5 Arlington and the parties were afforded full opportunity to offer
6 evidence, to call, examine and cross-examine witnesses. In
7 addition, the parties were afforded an opportunity to make
8 argument in support of their respective positions.

9 The Administrator had two witnesses. The first was
10 Ms. Brenda Smith. She's an investigator for the FAA Security
11 Division out of Oklahoma City.

12 She testified that they had received a -- and they
13 routinely -- I don't know that it was covered, but the Security
14 folks routinely send up names of people who submitted applications
15 for medical to the National Driving Registry, and each State that
16 might have had some kind of motor vehicle action, particularly
17 alcohol related, makes an entry. If there's any of those people
18 up there that are any of the names that are submitted by the
19 Administrator, then that comes back with a hit and then Ms. Smith
20 would have been assigned to do the investigation.

21 She identified and there was admitted seven exhibits.
22 The first was the application for medical signed by Respondent and
23 that application was made on the 23rd --

24 MR. EVANS: It was November 23rd, 2010, Your Honor.

25 ADMINISTRATIVE LAW JUDGE MULLINS: Yes. November 23rd
26 of 2010, just a few months back. Thank you.

27 The application indicates on question 18v, which says,
28 "Have you ever been diagnosed as or presently have any of the

1 following", and it says, "History of (1) any arrests and/or
2 convictions involving driving while intoxicated by, while impaired
3 by or while under the influence of alcohol or a drug; or (2)
4 history of any arrests and/or convictions and/or administrative
5 actions involving an offense which resulted in the denial,
6 suspension, cancellation or revocation of rights and privileges
7 which result in attendance at an educational or rehab program."
8 That's 18v on the application and it was marked "No".

9 The second exhibit admitted, identified and admitted, is
10 the information sheet that goes with the application.

11 Exhibit A-3 is the medical bulletin that was issued by
12 the flight surgeon involving -- and I think it's on page 3 -- and
13 talks about a new reporting policy or policy procedures for AMEs.

14 I had 2 years ago -- I think it was 2 years ago. It
15 might have been a year ago in January -- Dr. Silberman testify in
16 a case down in Miami that it really wasn't new policy. They were
17 just reinforcing what was the old policy, that it sort of slid to
18 the side.

19 But in any event, there is a requirement that, as
20 explained by Ms. Smith, that if there's a reported DUI offense
21 where an individual tested more than .15, then -- if it was less
22 than .15 and they reported it, the AME could go ahead and issue
23 the medical. If it was more than .15, then the matter would have
24 to be referred to the folks in Oklahoma City, the medical folks at
25 Oklahoma City.

26 And also, and I think this is critical, if anyone
27 refuses a breathalyzer, whether they've ever been convicted of any
28 subsequent offenses, but if they refuse a breath test, then the

1 AME cannot issue the medical and it has to go to the people in
2 Oklahoma City. As explained to me back then by Dr. Silberman, it
3 would require an evaluation by an alcohol abuse professional and a
4 report submitted to the people in Oklahoma City before they would
5 go ahead and issue the medical.

6 Exhibit A-4, which was identified and admitted, is the
7 record from the State of Arkansas from this activity and
8 subsequent court process after this arrest back on 9/11 of '08.

9 A-5 is the Texas Department of Public Safety records
10 that resulted as a result of that action over in Arkansas.

11 A-6 was a letter of investigation sent out by Ms. Smith.

12 And A-7 was the response to that letter, which at least
13 the pertinent parts of it seem to be filled out by Respondent's
14 attorney, Mr. Crisp, although it was signed by Respondent.

15 The second witness called by the Administrator was
16 Mr. Estes, who was the arresting policeman, patrol officer, and I
17 never was quite clear. I take it he wasn't an Arkansas Highway
18 Patrolman?

19 MR. WEBSTER: He's a police officer for the department,
20 City of Texarkana.

21 ADMINISTRATIVE LAW JUDGE MULLINS: Okay. A policeman
22 there in Texarkana. But in any event, he was called to testify
23 and he talked about his procedure and he identified his reports
24 and the information he filled out. Basically, he said that he had
25 no independent recollection of this offense and he didn't have his
26 report, his personal records with him. So basically, he just
27 reiterated what was in the records.

28 Respondent's first witness was Mr. Crisp, and Mr. Crisp

1 was the attorney, long-time friend since childhood of this
2 Respondent. Mr. Crisp and his wife are attorneys over at
3 Texarkana.

4 Mr. Crisp was notified sometime a few days after this
5 arrest on 9/11/08 by Mr. Ledwell to represent him. And amazingly,
6 having spent some time on the state court bench up in Oklahoma, it
7 was just unheard of to get a DWI reduced to reckless driving. I
8 don't know how you did that but that was a good lawyer job.

9 Mr. Crisp testified that the deal that he negotiated
10 with the prosecuting attorney was that that would be the only
11 offense, and later his wife went and she -- it was his testimony
12 that his wife's recollection of those events was that they reduced
13 it and she entered a plea for the Respondent to reckless driving.

14 And they weren't aware until just recently that there
15 was included in the findings of the Court this conviction for
16 impaired, which is sort of interesting. I assume those things
17 happen.

18 But the court record reflects that Respondent was
19 present with his counsel, Ms. Crisp, but Mr. Crisp and Mr. Ledwell
20 both testified that he was not required to be there. So this was
21 just some sort of machine-generated order that the Court signed
22 off on.

23 But Mr. Crisp did identify three exhibits and they're
24 called "Screen Print from AbleTerm Session", but they apparently
25 relate, one, to the not guilty judgment on the DWI offense, but a
26 guilty conviction on the reckless driving and also a guilty
27 conviction on the violation of the implied consent law. Those are
28 all dated in 2009, the convictions were, on June 2nd, 2009.

1 And then the last exhibit, or R-4, identified by
2 Respondent was the information sheet that goes with the
3 application under the old form, which did not have arrests but
4 just had convictions on it.

5 Those are the witnesses and those are the exhibits.

6 One of the things I found interesting, there was some
7 comment, I think by Respondent, that he was offered a breathalyzer
8 at the scene and refused that and then he was arrested and taken
9 down -- he didn't testify that he was arrested, but he was taken
10 downtown.

11 I had a hearing involving an airman a few years ago that
12 had a stop in Missouri and the State of Missouri, at least some of
13 the local police departments up there have their own little
14 breathalyzer thing and they do a breathalyzer at the scene and if
15 the defendant blows whatever and they believe that that person is
16 intoxicated or impaired, then they are taken immediately to the
17 local jail where they are given a regular breathalyzer test. So
18 there's like two breathalyzer tests, I know, in Missouri. Maybe
19 that's what they do in Arkansas.

20 But in any event, he said that he was offered a
21 breathalyzer at the scene and he refused it. And he signed the
22 form, which is part of Exhibit A-4, where he refused that test.

23 The burden of proof in these cases is on the
24 Administrator by a preponderance of reliable and probative
25 evidence.

26 What's difficult in these cases and continues to be
27 difficult for the Board and for the Administrator is that the
28 documents that have been introduced, A-1 through -7, would

1 indicate that there was a probability, certainly would take one
2 past any kind of a directed verdict, that there was intentional
3 falsification on the part of these Respondents.

4 For 2 or 3 years the Board was just granting summary
5 judgment and approving that. Well, the Circuit Court put a stop
6 to that and said, "No, it might shift the burden over to the
7 Respondent but it certainly would not justify a summary judgment."

8 So the bellwether case in all these matters is *Hart v.*
9 *McLucas*, and that was a case that went up to the Circuit Court and
10 they reversed the Board and it was sent back on remand. One of
11 the interesting things -- and I wish the Administrator would read
12 that again and do something about that, and that would put a stop
13 to all this litigation on that. But the Circuit Court said in
14 *McLucas* that if the Administrator wanted to make it strict
15 liability, all they have to do is change the rule and it would be
16 so simple, because I know Mr. Webster gets to travel a lot and I
17 get a lot of these cases on a weekly basis coming out of Oklahoma
18 City. And the issue is whether or not the matter was
19 intentionally falsified.

20 The recent case of *Cooper*, which was one of my cases
21 with Mr. Webster out in Lubbock, the Board seemed to say that if
22 the airman testified that he didn't read it, then that was strict
23 liability and that was intentional falsification.

24 And the Board when they said that, never addressed the
25 *Motronec* case, which was one of my cases out of Houston a number
26 of years ago, where a fellow testified that on an application --
27 he was endorsing an application for some rating. I think it was
28 airframe and powerplant rating for this individual, and he put on

1 there and signed it that this individual had so many hours of
2 practical experience. And on his examination he said, "Well, I
3 didn't know whether he had that or not. I thought he did but I
4 didn't know for sure, but I went ahead and put it on there." And
5 I held, "Well, that was intentional falsification".

6 The Board reversed me and said, "No, he has to know that
7 what he put down was wrong. He can't just know that he doesn't
8 know that it was right or wrong."

9 But anyway, the Cooper case seemed to have gone off in a
10 different direction. So I still don't know. I'm still confused
11 about that.

12 The sad thing in these cases is that the medical people
13 in Oklahoma City and the AME folks, they don't want all of these
14 licenses. They want to just make sure that there's not an alcohol
15 issue with the medical certificate that might be issued.

16 And it's real clear in this case and all of the cases
17 that I've had that all the Respondent had to do was say, "Yeah, I
18 was arrested back then", and they don't do anything with it.

19 Now, if they're arrested twice on two different
20 occasions, then they're still not going to revoke the airman
21 certificate but they're probably going to have that person do a
22 pretty good screen and they may even revoke the medical on a
23 permanent basis until there's been some kind of rehab program,
24 which I think is a 2- or 3-year program. But anyway, that's
25 another issue.

26 But the bottom line is that the medical people don't
27 want all these certificates. But in the FAA, and if you just
28 think about it for a minute, intentional falsification impacts

1 every certificate, as it has here today, and there's a reason for
2 that. It's that the system of written and paperwork within the
3 Federal Aviation Administration absolutely requires accuracy and
4 integrity of all the entries, and any intentional falsification is
5 justification for the revocation of those certificates.

6 Here the Respondent obviously is a college graduate with
7 a degree in literature. By the way, I have one of those too. But
8 he has the educational background. He started flying in 2005. At
9 some point since then he's spent 18 months as a flight instructor.
10 He has a certified flight instructor rating. He has a certified
11 flight instrument instructor rating, and he seems to have all the
12 ratings that you would expect someone that's really interested in
13 aviation to have except his airline transport pilot certificate.

14 And the other thing that's interesting is that over the
15 period of time that he's been acquiring those airman certificates
16 and doing that flight instructing, the emphasis on alcohol-related
17 offenses and the requirement to report that has just gone straight
18 up. I've seen it sitting in my position, but I know every pilot
19 that I know is aware how serious those allegations are if there's
20 some kind of alcohol-related problems.

21 And based on all that, I just can't assess any
22 credibility to the Respondent's comment that he just didn't
23 understand that question: Any arrest for alcohol-related
24 offenses. I mean, this wasn't just some little stop and have
25 coffee with a policeman out there on that road that evening in
26 Texarkana over in Arkansas. I mean, he was placed in the back of
27 the patrol car. He was taken downtown. He was not incarcerated.

28 And that event in and of itself was so dramatic in

1 anybody's life and particularly someone -- and apparently this is
2 a first offense for him. And then to come and say that he had
3 never been arrested is just not credible. And sadly, as I said,
4 if he had put, "Yes, I did", we wouldn't be here today.

5 But the credibility of the respondents in these cases is
6 the bottom line and here I can't assess any credibility to the
7 Respondent's answer and his testimony here today.

8 Therefore, the order of revocation will be affirmed.

9 ORDER

10 IT IS THEREFORE ORDERED that safety in air commerce and
11 safety in air transportation and a preponderance of the reliable
12 and probative evidence has established the regulatory violations
13 as alleged.

14 Specifically, I find that there was an intentional
15 falsification, which requires a finding under FAR 67.403(b). And
16 also I found that there was a violation of 61.15(e), which was a
17 failure to report the alcohol-related event.

18 Therefore, the Order of Revocation is affirmed.

19

20

21 EDITED ON

22 APRIL 18, 2011

23

WILLIAM R. MULLINS

Administrative Law Judge