

SERVED: August 30, 2011

NTSB Order No. EA-5596

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 29th day of August, 2011

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

**OPINION AND ORDER**

Respondent appeals the March 8, 2011 decision on remand of Chief Administrative Law Judge William E. Fowler, Jr.<sup>1</sup> The law judge affirmed the Administrator's complaint, thereby finding

<sup>1</sup> A copy of the order on remand and the oral initial decision, an excerpt from the hearing transcript, are attached.

respondent violated 14 C.F.R. §§ 91.403(a),<sup>2</sup> 91.13(a),<sup>3</sup> and 47.3(b).<sup>4</sup> We affirm the law judge's order.

As stated in our prior opinion<sup>5</sup> wherein we remanded this case, the Administrator ordered suspension of respondent's commercial pilot certificate on September 17, 2009, based on the allegation that 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 on December 25, 2008. The order stated, 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 applicable experimental operating limitations because it did not have a condition inspection that found it to be in a condition for safe operation. The order alleged that both the experimental operating limitations and the

---

<sup>2</sup> Section 91.403(a) provides 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).

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> NTSB Order No. 5539 (2010).

airworthiness certificate required the helicopter to undergo a condition inspection every 12 months, and that a review of the aircraft's logbook indicated the last condition inspection occurred on April 18, 2007. As a result, the order stated 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. The inspectors, Sean Mosher and James Franklin, testified about the importance of condition inspections.<sup>6</sup> Inspector Mosher, of the Columbia, South Carolina Flight Standards District Office (FSDO), acknowledged the aircraft's logbook indicated the helicopter underwent maintenance on April 1, 2008, but noted the logbook entry did not include the requisite language indicating the condition inspection occurred.<sup>7</sup>

Inspector Franklin, also of the Columbia FSDO, corroborated

---

<sup>6</sup> Both inspectors stated if an aircraft such as the one at issue has not undergone a condition inspection in the past 12 months, it is considered unairworthy.

<sup>7</sup> Regarding the wording a mechanic must include to indicate the aircraft has undergone a condition inspection, Inspector Franklin referenced paragraph 20 of the operating limitations, which requires: "I certify that this aircraft has 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.

Inspector Mosher's testimony, and stated his review of the aircraft's registration records indicated 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; the owner must then 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 the helicopter was not registered to Haddock Flying Service until respondent sent the registration form to the FAA 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.

In rebuttal, respondent called Mr. Moore to testify. Mr. Moore stated he built the aircraft at issue and knew the operating limitations required a yearly condition inspection. On direct and cross examination, Mr. Moore consistently contended he performed a condition inspection on April 1, 2008, even though he did not include explicit language in the aircraft logbook indicating such.<sup>8</sup> Mr. Moore testified his inclusion of

---

<sup>8</sup> When confronted on cross examination with the differences in the wording of the logbook entries from year to year, Mr. Moore,

the statement "check comp found to be in airworthy cond return to ser" in the April 1, 2008, logbook entry indicated he had completed a condition inspection. Tr. at 106-107, 116. Exh. A-3 at 2.<sup>9</sup> Mr. Moore also stated he told respondent he had completed the most recent condition inspection on April 1, 2008.

With regard to the registration, Mr. Moore testified he recalled mailing paperwork to Oklahoma City in order to transfer the registration to respondent.<sup>10</sup> Mr. Moore stated 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 he had no reason to believe the aircraft was unairworthy, given Mr. Moore showed him logbook entries for April 2006, April 2007, and April 2008, and characterized the entries as evidence the requisite condition inspections occurred. Respondent testified he relied on Mr. Moore's statement that the aircraft was in an airworthy condition.

---

(..continued)

who testified 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.

<sup>9</sup> 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<sup>t</sup> [sic] Condition Inspection Found To Be Airworthy Return To Service." Id.

<sup>10</sup> Mr. Moore did not explicitly state what paperwork he sent.

Concerning the registration, respondent stated he recalled completing the registration form with Mr. Moore when he bought the helicopter on December 21, 2008, but did not mail it until after the accident.<sup>11</sup> Respondent testified he believed he fulfilled the registration requirements because he and Mr. Moore placed the registration, including the pink carbon copy, in the aircraft when respondent purchased it. Respondent also called two other witnesses who stated they were present when respondent bought the aircraft from Mr. Moore, and they observed Mr. Moore and respondent fill out the registration form and place it in the box in the cockpit.<sup>12</sup> One witness stated 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.

At the conclusion of the hearing, the law judge issued an oral initial decision, in which he determined Mr. Moore used the wrong language to indicate he had completed the condition inspection in April 2008. The law judge did not make a specific

---

<sup>11</sup> Respondent stated 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) at the time of the accident; and after the accident, respondent completed another registration form and mailed it in (Tr. at 129-30).

<sup>12</sup> 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) the witnesses saw Mr. Moore and respondent place in the aircraft.

finding as to whether respondent relied on Mr. Moore's statements to him regarding the condition inspection. The law judge further stated an owner's intent is not an element of a charge of improper registration, and "there was no documentation of that registration or the attempts except the testimony of the [r]espondent's witnesses," id., although respondent and his witnesses established respondent attempted to register the aircraft. The law judge did, however, reduce the sanction from 90 days to 60 days, as a result of his belief respondent had made a "substantial attempt" to register the aircraft.

Respondent appealed the law judge's oral initial decision, and we remanded the case to the law judge for more detailed findings on specific issues. For example, we instructed the law judge to 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 the Administrator's contention, respondent did not properly register the aircraft. We also directed the law judge to explain how the Administrator proved the aircraft had not undergone a condition inspection and was therefore unairworthy, when Mr. Moore testified at the hearing he had ostensibly completed such an inspection but he failed to document it properly.

Respondent now appeals the law judge's decision on remand, raising several issues. Respondent argues the law judge erred in determining the aircraft was not properly registered at the time of the December 25, 2008 accident. Respondent contends the law judge erred in concluding respondent was responsible for operating the aircraft when it was in an unairworthy condition, because Mr. Moore completed a condition inspection and found the aircraft airworthy earlier in 2008. Respondent also argues the law judge erred in considering Inspector Franklin an expert witness. Overall, respondent asserts the law judge erred in general by not addressing the questions the Board instructed him to analyze in the Board's opinion and order remanding the case.

The law judge's decision on remand does not address our question concerning the paperwork required to register an aircraft pursuant to § 43.7(b). The law judge, however, issued credibility findings in favor of both inspectors' testimony. Respondent does not suggest what action the Board should take in response to the law judge's failure to address the questions posed in the opinion and order remanding the case. Instead, respondent simply contends we should reverse the law judge's order, based on the issues listed above.

Inspector Franklin opined the helicopter was not registered to Haddock Flying Service until respondent sent the registration form sometime in January 2009. Tr. at 84. We consider this

opinion to be an interpretation of § 43.7(b). In this regard, we are obligated to defer to the Administrator's interpretation of the Federal Aviation Regulations, unless the interpretation is arbitrary, capricious, or contrary to law.<sup>13</sup> The law judge's credibility determination in favor of Inspector Franklin's testimony, combined with the fact this testimony was probative on the issue of the necessity of the existence of the pink carbon copy in the aircraft at all times until the registration was finalized, leads us to agree the pink copy needed to be present in the aircraft on December 25, 2008, in order for respondent to have fulfilled the requirements of § 43.7(b).

The testimony concerning whether the pink carbon copy of the registration form was indeed in the cockpit at the time of the aircraft accident is inconsistent: Inspector Franklin, who arrived at the scene of the accident, testified he never saw the pink copy. Tr. at 84. Respondent, however, contended the pink copy was in a box in the cockpit, and no one ever located it. Tr. at 126-28. Given the law judge's credibility finding on remand in favor of Inspector Franklin's testimony (and

---

<sup>13</sup> 49 U.S.C. § 44709(d)(3); Hinson v. NTSB, 57 F.3d 1144, 1151 (D.C. Cir. 1995); see also Petition of Seagist, NTSB Order No. EA-5176 at 4 (2005) (stating Board is bound by FAA reasonable interpretation of regulations and citing Garvey v. NTSB, 190 F.3d 571 (D.C. Cir. 1999); NVE v. HHS, 436 F.3d 182, 186 (3<sup>rd</sup> Cir. 2006); Chevron v. Nat'l Res. Def. Council, 467 U.S. 837, 842-43 (1984)).

unfavorable finding with regard to respondent's and Mr. Moore's testimony), we find the pink copy was not in the cockpit when respondent was operating it. In this regard, we note we will defer to law judge's credibility findings unless they are arbitrary and capricious.<sup>14</sup> We have evaluated the law judge's determination in light of this standard, and find it was not arbitrary and capricious, as no evidence indicates the law judge acted in an arbitrary manner by failing to consider certain evidence.

With regard to the issue of whether Mr. Moore failed to conduct a condition inspection of the aircraft in 2008, and thereby left the aircraft in an unairworthy condition, we believe respondent's argument on appeal amounts to an assertion that the doctrine of reasonable reliance excuses any violations of §§ 91.403 and 91.13(a). Therefore, we have carefully evaluated respondent's arguments in light of our doctrine of reasonable reliance. In this regard, we have held as follows:

If ... a particular task is the responsibility of another, if the pilot-in-command [PIC] has no independent obligation (e.g., based on the operating procedures or manuals) or ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found.

---

<sup>14</sup> See, e.g., Administrator v. Porco, NTSB Order No. EA-5591 at 20 (2011); Administrator v. Smith, 5 NTSB 1560 (1986); Administrator v. Jones, 3 NTSB 3649 (1981).

Administrator v. Fay & Takacs, NTSB Order No. EA-3501 at 4 (1992).<sup>15</sup> We have consistently explained, however, the doctrine of reasonable reliance is a narrow one.<sup>16</sup> In addition, in determining whether reliance was reasonable, we will consider "the facts of each case" and "the entire circumstances" surrounding the alleged violation.<sup>17</sup> Accordingly, reasonable reliance is a narrow doctrine applicable in cases "involving specialized, technical expertise where a flight crew member could not be expected to have the necessary knowledge."<sup>18</sup>

In prior Board cases addressing a pilot's failure to verify a mechanic properly certified the aircraft's logbook after maintenance work, we have rejected the defense of reasonable

---

<sup>15</sup> We have also stated, "[we decline] to hold the PIC culpable for FAR [Federal Aviation Regulations] violations caused by the action (or inaction) of another, when the PIC had no reason or basis to look behind or question either that other individual's representation or performance of assigned duties." Administrator v. Bass, NTSB Order No. EA-3507 at 2 (1992).

<sup>16</sup> See, e.g., Application of Keith, NTSB Order No. EA-5223 at 6-8 (2006) (stating the respondent should have independently questioned whether his flight was permitted to enter the Air Defense Identification Zone, and citing the following cases for the proposition that the Board narrowly applies the doctrine of reasonable reliance: Administrator v. Doreen, NTSB Order No. EA-4778 at 2 (1999); Administrator v. Nutsch, NTSB Order No. EA-4148 (1994), aff'd 55 F.3d 684 (D.C. Cir. 1995); Administrator v. Buboltz, NTSB Order No. EA-3907 at 2 (1993); Administrator v. Papadakis, 2 NTSB 2311, 2313 (1976)).

<sup>17</sup> Adminstrator v. Buboltz, supra note 15 at 5-6 (quoting Administrator v. Leenerts, NTSB Order No. EA-2845 at 9 (1988)).

<sup>18</sup> Fay & Takacs, supra note 14, at 10.

reliance. One of a pilot's duties prior to operating an aircraft is the "responsibility to ensure that maintenance records were completed by the mechanic."<sup>19</sup> In addition, the PIC is ultimately responsible for safe operation of the flight, which involves ensuring the aircraft is in an airworthy condition prior to and during its operation.<sup>20</sup> Furthermore, prior cases have also limited the defense of reasonable reliance to situations where the pilot has relied on other crew members.<sup>21</sup> In Nutsch v. National Transportation Safety Board, the D.C. Circuit explicitly stated, "[a]n element of the reasonable reliance defense is that the duty being relied upon must be one that has been assigned to the co-pilot or other crew member."<sup>22</sup>

In the case at hand, Mr. Moore was neither respondent's co-pilot nor crew member. Respondent, as the owner and operator of the aircraft, had a duty to ensure the aircraft complied with

---

<sup>19</sup> Administrator v. Easton, NTSB Order No. EA-4732 at 7-8 n.7 (1998).

<sup>20</sup> Administrator v. Nielson, NTSB Order No. EA-3755 at 6 (1992) (rejecting the respondent's argument he relied upon the expertise of a mechanic who did not inform him the aircraft was unsafe, and stating, "it was respondent's ultimate responsibility, as pilot-in-command, to ascertain whether the aircraft was airworthy").

<sup>21</sup> Administrator v. Bass, NTSB Order No. EA 3507 at 4-5 (1992) (noting reliance is reasonable when another crew member has a duty to perform a task); Easton, supra note 18 at 7 n.7 (noting reasonable reliance involves the PIC's reliance on another crew member).

<sup>22</sup> 55 F.3d 684, 1 (D.C. Cir. 1995) (unpublished disposition).

its type certificate and was in a safe condition for operation. Inspector Franklin clearly testified the aircraft was not considered to be in a safe condition for operation in the absence of satisfactory completion of a condition inspection. Tr. at 73. Respondent could have reviewed the maintenance log and compared it with the requirements of the experimental operating limitations applicable to the aircraft,<sup>23</sup> which explicitly provide the language necessary to indicate the aircraft underwent a satisfactory condition inspection. In doing so, he would have ascertained Mr. Moore had not used the requisite language.

In addition, the law judge's decision on remand includes a credibility determination adverse to respondent and Mr. Moore. As discussed above, we defer to a law judge's credibility determination absent a showing it is arbitrary and capricious. Respondent has not made such a showing here, and the law judge's decision on remand compared Mr. Moore's notations indicating he conducted two prior condition inspections (stating "Complete Cond. Insp." and "Comple<sup>t</sup> [sic] Condition Inspection") with the notation concerning the work Mr. Moore completed on the aircraft in 2008 (stating "check comp."). Furthermore, respondent's

---

<sup>23</sup> Exh. A-4; see also tr. at 71 (Inspector Franklin's testimony that pilots are required to be aware of their aircraft's operating limitations).

contention mechanics often use the words "check" and "inspection" interchangeably does not address the fact Mr. Moore's 2008 notation does not list the word "condition," which Mr. Moore had consistently used in the past to exhibit his completion of a condition inspection. Overall, respondent's reliance on Mr. Moore's assertions the aircraft was airworthy and the condition inspection was performed was not reasonable under the circumstances. As a result, we find respondent violated §§ 91.403(a) and 91.13(a).

Respondent further argues the law judge erred in considering Inspector Franklin to be an expert. At the hearing, the Administrator's attorney did not offer Inspector Franklin as an expert, but the law judge, in overruling respondent's objection to a portion of Inspector Franklin's testimony, stated, "[t]he witness is an expert in this area. He may answer." Tr. at 73. In the law judge's decision on remand, the law judge again stated Inspector Franklin was an expert on experimental aircraft. Order at 3. We understand respondent's argument and acknowledge the law judge's disposition of the objection and his language in the order on remand were unnecessary, as the Administrator's attorney did not ask that Inspector Franklin be designated an expert. The law judge's ruling in this regard, however, was not prejudicial. Inspector Franklin offered testimony concerning the requirements

of § 43.7(b), as well as eyewitness testimony he did not observe the pink copy in or near the aircraft after the accident on December 25, 2008. As such, Inspector Franklin did not offer expert testimony. To the extent respondent believes Inspector Franklin's testimony concerning § 43.7(b) required expertise, we disagree with such an assessment, as we have reviewed many records of cases in which a non-expert FAA inspector explains the requirements of a regulation and how certificate holders observe certain regulations in practice. Overall, respondent cannot show the law judge's error was prejudicial to his case.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The order of the law judge on remand, denying respondent's appeal, is affirmed; and
3. The 60-day suspension of respondent's commercial pilot certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>24</sup>

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

---

<sup>24</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

SERVED: March 8, 2011

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

---

J. RANDOLPH BABBITT,  
ADMINISTRATOR,  
FEDERAL AVIATION ADMINISTRATION,

Complainant,

DOCKET SE-18700RM

v.

DARGAN DEWEY HADDOCK,

Respondent.

---

ORDER ON REMAND

SERVICE: John Adams Hodge, Esq.  
P.O. Box 11889  
1201 Main Street, 22<sup>nd</sup> Floor (29201)  
Columbia, SC 29211-1889  
(Certified Mail & FAX)

Taneesha D. Marshall, Esq.  
FAA/Ofc of the Regional Counsel  
P.O. Box 20636  
Atlanta, GA 30320  
(FAX)

The Board remanded this case for clarification and an assessment regarding the weight of evidence in arriving at the final determinations and conclusions in this proceeding.

As stated in the oral initial decision and order, the 13 numbered paragraphs setting forth the allegations and charges comprising the Administrator's 90-day Order of Suspension were successfully proven by the Administrator by a fair and reasonable preponderance of the credible, material, relevant and probative evidence, reflected by the determination of the undersigned that the witnesses of the Administrator were more credible than respondent's witnesses.

The respondent's admissions during his testimony regarding his failure to mail in the white registration form prior to the December 25, 2008, aircraft accident, coupled with corroborative testimony of other witnesses of the respondent, was case dispositive of the issue of improper registration of the aircraft by respondent.

In particular, the testimony of respondent's witnesses, Fromm and West, that they were present when respondent purchased the aircraft from Mr. Moore, and observed Mr. Moore and the respondent fill out the registration form and place it in the box in the aircraft's cockpit prior to the accident -- thus negating the aircraft's proper and correct registration -- was uncontroverted.

Further, respondent testified that he did not mail in the white registration copy to Oklahoma City until sometime in January 2009, after the accident had occurred.

Upon observing and evaluating the testimony of the Administrator's witnesses Inspectors Mosher and Franklin, both of whom were forthright, candid, instructive and corroborative, the undersigned finds that a violation of an absent condition inspection were successfully established.

In particular, FAA Inspector Franklin, designated on the record as an expert on experimental aircraft, testified "if an aircraft, such as the one at issue, had not undergone a condition inspection in the past 12 months it is considered unairworthy." Inspector Franklin testified that the aircraft had not undergone the required inspection because Mr. Moore, a witness for respondent and the former owner of the aircraft, who performed the April 2008 maintenance on the helicopter, did not include in the aircraft's logbook the required language, or a similar statement, indicating that the condition inspection had occurred.

While Mr. Moore testified that the reason the April 2008 entry did not reflect the language required by Paragraph 20 of the operating limitations was that "I did do a condition inspection [in April 2008]. I apologize for misverb[al]izing this. You know, I'm not the best in the world at reading and writing " (Tr. 115) and that he had a sixth grade education (id.), a comparison of the April 2008 entry and those made by Mr. Moore in April 2006 and April 2007 brings into serious question the credibility of his testimony in that regard. Specifically, the April 2006 entry states in relevant part, "Complete Cond. Insp. Found To Be in An Airworthy cond" and the April 2007 entry states in relevant part "Comple[t]e Condition Found To Be Airworthy Returned to Service, "whereas the April 2008 entry states "Grease Rotor Head & Short Shaft

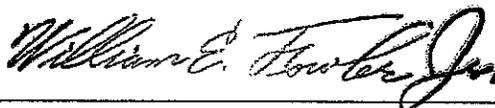
Tail Rotor Drive Shaft Check Comp Found To Be in Airworthy cond Return to Ser.” It is clear that he included appropriate language in the entries that he made on two separate occasions prior to April 2008 and, thus, knew what language was necessary to properly document a condition inspection at the time he made that entry.

For the reasons set forth above, as well as those previously stated in the Oral Initial Decision dated February 23, 2010, this judge finds that safety in air commerce or air transportation and the public interest requires the affirmation of the Administrator’s Order of Suspension, dated September 17, 2009.

ORDER

**IT IS ORDERED** that the Administrator’s Order of Suspension dated September 17, 2009, be and the same is hereby modified to a period of suspension of respondent’s commercial pilot certificate of 60 days.

Entered this 8<sup>th</sup> day of March 2011, at Washington, D.C.



---

WILLIAM E. FOWLER, JR.  
Chief Judge

**APPEAL (DISPOSITIONAL ORDER)**

Any party to this proceeding may appeal this order by filing a written notice of appeal within 10 days after the date on which it was served (the service date appears on the first page of this order). An original and 3 copies of the notice of appeal must be filed with the:

National Transportation Safety Board  
Office of Administrative Law Judges  
Room 4704  
490 L'Enfant Plaza East, S.W.  
Washington D.C. 20594  
Telephone: (202) 314-6150 or (800) 854-8758

That party must also perfect the appeal by filing a brief in support of the appeal within 30 days after the date of service of this order. An original and one copy of the brief must be filed directly with the:

National Transportation Safety Board  
Office of General Counsel  
Room 6401  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
Telephone: (202) 314-6080  
FAX: (202) 314-6090

The Board may dismiss appeals on its own motion, or the motion of another party, when a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

A brief in reply to the appeal brief may be filed by any other party within 30 days after that party was served with the appeal brief. An original and one copy of the reply brief must be filed directly with the Office of General Counsel in Room 6401.

**NOTE: Copies of the notice of appeal and briefs must also be served on all other parties to this proceeding.**

An original and one copy of all papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel in Room 6401. Copies of such documents must also be served on the other parties.

The Board directs your attention to Rules 7, 43, 47, 48 and 49 of its Rules of Practice in Air Safety Proceedings (codified at 49 C.F.R. §§ 821.7, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

**ABSENT A SHOWING OF GOOD CAUSE, THE BOARD WILL NOT ACCEPT LATE APPEALS OR APPEAL BRIEFS.**

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.

DARGAN D. HADDOCK,

Respondent.

\* \* \* \* \*

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Docket No.: SE-18700  
JUDGE FOWLER

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:

TANEESHA D. MARSHALL, Attorney  
Federal Aviation Administration  
Office of the Regional Counsel  
FAA Southern Region  
Post Office Box 20636  
Atlanta, Georgia 30320  
(404) 305-5200

On behalf of the Respondent:

JOHN ADAMS HODGE, Esquire  
Haynsworth Sinkler Boyd, P.A.  
1201 Main Street, 22nd Floor (29201)  
Post Office Box 11889  
Columbia, South Carolina 29211-1889

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE FOWLER: This has been a proceeding before the National Transportation Safety Board held pursuant to the provisions of the Federal Aviation Act of 1958, as that Act was subsequently amended, on the Appeal of 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.

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.

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 subsequent written decision or, to do as I am going to do forthwith at this time, issue an Oral Initial Decision on the record.

1           Following notices to the parties, this matter came on  
2 for trial on February 23rd, 2010. The Respondent Dargan Dewey  
3 Haddock was present at all times and was very ably represented by  
4 John Hodge, Esquire. The Complainant in this proceeding was also  
5 very ably represented by Taneesha Marshall, Esquire, of the  
6 Regional Counsel's Office, Southern Region, of the FAA.

7           Both parties have been afforded the opportunity to call,  
8 examine, and cross-examine witnesses on behalf of their cases. In  
9 addition, the parties were afforded the opportunity to make final  
10 argument in support of their respective positions.

#### 11                           DISCUSSION

12           I have reviewed the testimony and evidence produced  
13 during the course of this proceeding, which has consisted of two  
14 witnesses on behalf of the Administrator coupled with eight  
15 exhibits. The Respondent had four witnesses and I believe it was  
16 five exhibits that the Respondent had.

17           The main, primary, pertinent, and salient issues to be  
18 resolved in this proceeding is: Was the proper aircraft  
19 conditional notice given, as it pertains to experimental aircraft,  
20 which is what we have here with Respondent's helicopter; did that  
21 above-described aircraft have a timely condition inspection notice  
22 duly documented and performed in accordance with Federal Aviation  
23 Regulation, 43 Appendix D? The other issue was the registration  
24 of the aircraft.

25           There are 13 paragraphs setting forth the allegations

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

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

16 Inspector Franklin and Mosher did an in-depth,  
17 exhaustive investigation concerning this case. We've had testimony  
18 by the Respondent's witnesses, including the Respondent himself,  
19 that, as with life, you're dealing with Christmas week here in  
20 2008 where the aforesaid registration or attempted registration of  
21 the aircraft is concerned, four days before the unfortunate  
22 accident injuring both the Respondent and his passenger.

23 Having reviewed all of the testimony and evidence, it is  
24 my determination that the Administrator has successfully proven by  
25 a fair and reasonable preponderance of the credible, material,

1 relevant, and probative evidence, all of the allegations set forth  
2 in the Administrator's Order of Suspension.

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

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

16           On the registration, counsel for the Administrator is  
17 absolutely correct, intent is not an element involved with  
18 registration. However, I cannot reject out of hand, or even in a  
19 sense, negate the testimony of Respondent and his witnesses that  
20 there was a serious attempt made to register this aircraft as of,  
21 I believe it was, December 21st, 2008. However, as you all  
22 recall, due to facts and circumstances, there was no documentation  
23 of that registration, or the attempts, except the testimony of the  
24 Respondent's witnesses.

25           As of January 9th, 2009, as you may recall, Inspector

1 Franklin testified the FAA records in Oklahoma City, or elsewhere,  
2 there was no change in the registration of the aircraft. It still  
3 was registered to David Moore, once the owner.

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

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

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

17 11. It is found that an inspection of the aircraft  
18 logbook by FAA inspectors for aircraft N75EW revealed that the  
19 last completed aircraft condition notice was done on April 18th,  
20 2007. The next required aircraft condition notice was due by the  
21 end of April 2008 and there was no documentation to that effect.

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

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

3           Section 91.403(a) in that the owner or operator of an  
4 aircraft failed to be primarily responsible for maintaining that  
5 aircraft in an airworthy condition, including compliance with FAR  
6 43, Appendix D, which is required of all experimental aircraft  
7 which are bound by the experimental operating limitations, which  
8 means that the a CI must be done every 12 months by a owner or  
9 operator of the aircraft;

10           Section 91.13(a) in that no person may operate an  
11 aircraft in a careless manner so as to endanger the life and  
12 property of another. I would say this was careless operation.  
13 The Respondent is a very seasoned and experienced pilot with more  
14 than 6,000 hours of flight time. He should be -- should have been  
15 fully cognizant of what documentation is required every 12 months  
16 for this aircraft, being an experimental helicopter aircraft as it  
17 was. So that I think this was careless. I will not determine, as  
18 has been alluded to, that this was reckless but, of course,  
19 Section 91.13(a), holding that there was carelessness is a  
20 derivative section based on the other violations that I have  
21 stated.

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

25           There was a substantial attempt shown by the evidence



APPEAL1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

On the issue of appeal, either party may appeal the Judge's Oral Initial Decision just issued. The Appellant shall file a Notice of Appeal within 10 days following the date of the Judge's Oral Initial Decision, which was issued on February 23rd, 2010. In order to perfect the Appeal, the Appellant must file a brief within 50 days, setting forth his objections to the Judge's Oral Initial Decision.

The Notice of Appeal and the brief shall be filed with the National Transportation Safety Board, Office of Judges, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594. If no appeal to the Board by either party is received, or if the Board does not, of its own volition, file a motion to review the Judge's Oral Initial Decision within the time allowed, then the Judge's decision shall become final.

Timely filing of such an appeal, however, shall stay the Order as set forth in the Judge's Oral Initial Decision. Let me set forth the timely parameters once again: 10 days from the date of today's decision for the Notice of Appeal; 50 days from today's date for the brief setting forth objections to the Judge's Oral Initial Decision.

(Off the record.)

(On the record.)

JUDGE FOWLER: On the record.

Let the record indicate counsel for the Respondent has stated he

1 will be filing a notice of Appeal from the Judge's Oral Initial  
2 Decision just issued.

3           If there is nothing further at this time, I would  
4 declare the hearing closed. But before we go off the record I  
5 would like to express my thanks to both counsel for their  
6 extremely diligent, industrious, and erudite efforts on behalf of  
7 their respective clients. I would also like to express my thanks  
8 to all of the witnesses, and all of you here in attendance, for  
9 your patience, your help, assistance and cooperation. Thank you  
10 all very much. We stand adjourned.

11           (Whereupon, at 6:05 p.m., the hearing in the above-  
12 entitled matter was concluded.)

13

14

15

16

17

18

19

20

21

22

23

24

25