

SERVED: October 26, 2012

NTSB Order No. EA-5641

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 25th day of October, 2012

_____)	
MICHAEL P. HUERTA,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19191
v.)	
)	
RANDY HERBERT REYNOLDS,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

The Administrator appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montano, issued March 21, 2012.¹ By that decision, the law judge determined the Administrator failed to prove respondent violated 14 C.F.R. § 43.12(a)(1)² when he placed a pre-

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

² Section 43.12(a)(1) states, “[n]o person may make or cause to be made ... [a]ny fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show

signed sticker in the logbook of a Hughes 269B helicopter, indicating the aircraft had undergone an annual inspection. The Administrator issued an emergency order on October 6, 2011, revoking respondent's mechanic certificate with Airframe and Powerplant (A&P) rating. We deny the Administrator's appeal.

A. Facts

Respondent owned a helicopter maintenance business called "Wild Wolf Helicopters" located in Lincolnton, North Carolina. David Teat, the owner of Heartland Helicopters, LLC, in Fort Wayne, Indiana, hired respondent to remove the engine from his Hughes 269B helicopter, conduct various maintenance tasks, and perform a 100-hour inspection. Respondent completed the work in March 2011. When Mr. Teat hired respondent, he also informed respondent the aircraft was due for its annual inspection as the current one expired in late March 2011.³ Respondent, who did not have inspection authorization (IA) privileges with his A&P certificate, contacted Thomas Jacques, an A&P mechanic with IA privileges, to perform the annual inspection. Mr. Jacques planned to travel to Indiana with respondent to conduct the inspection. Respondent arrived in Indiana on March 7, 2011, to perform the maintenance on the helicopter. He completed the 100-hour inspection on March 16, 2011.⁴

(..continued)
compliance with any requirement under this part."

³ The record does not indicate the exact expiration date of the annual inspection, but contains correspondence between Mr. Teat and respondent indicating the inspection was due in late March 2011.

⁴ See 14 C.F.R. § 91.409(b) (stating a 100-hour inspection is due every 100 hours when operating an aircraft for commercial use); Tr. 146-48 (FAA inspector's testimony citing 14 C.F.R. part 43, appendix D, and stating the regulations only permit a mechanic with IA privileges to conduct an annual inspection, whereas an A&P mechanic without IA privileges may conduct a 100-hour inspection)

As the expiration date for the aircraft's annual inspection drew closer, in a March 21, 2011 email, Mr. Teat informed respondent he had called five mechanics, some of whom were "Aircraft Inspectors," who told him "it is normal practice for [the mechanic] to write up [the] [a]nnual [i]nspection work, print it on [the mechanic's] sticky paper and mail it to [the owner] along with the [a]nnual check-list. It is the common practice for [the owner] to paste it into the maintenance log book."⁵ Respondent assured Mr. Teat the annual inspection would be completed before the end of March 2011.

After completing the 100-hour inspection, respondent corresponded with Mr. Jacques to arrange for Mr. Jacques to complete the annual inspection. Mr. Jacques originally planned to travel to Indiana with respondent to see the aircraft, but Mr. Jacques's employment in North Carolina ultimately prevented him from doing so.⁶ Instead, Mr. Jacques reviewed a copy of the aircraft logbook and the applicable airworthiness directives (ADs). He determined he needed to verify the aircraft complied with one particular AD. From North Carolina, Mr. Jacques typed the certification statement on the sticker, signed it, and gave it to respondent. Respondent then traveled to Indiana at his own expense, reviewed the information relevant to the AD in the aircraft logbook, and informed Mr. Jacques of that information over the telephone.

⁵ Exh. A-8.

⁶ Tr. 88; see also Exhibit R-2, in which respondent responded to FAA Inspector Randy Stromski concerning the plans to inspect the aircraft:

Dave informed me that he could not financially afford to pay either Tom or I to return to complete the paper work and recheck the ADs. I informed Dave that we would return at my expense. Tom was unable to make the trip. Therefore, I did return and check the outstanding AD notes, painted the tail rotor driveshaft, and noted it had not rubbed in the last ten hours of flight time.

Inspector Stromski did not testify at the hearing.

After their conversation, Mr. Jacques indicated the aircraft's annual inspection was complete. Respondent made the necessary entries in the aircraft's logbook, certifying he had inspected the aircraft "in accordance with the 100 hr and [b]iannual inspection."⁷ Below this entry in the logbook, respondent attached the pre-printed, signed sticker from Mr. Jacques. Mr. Jacques's notation stated, "I certify that this aircraft has been inspected [in accordance with] an annual inspection and was determined to in [*sic*] airworthy condition this date."⁸

B. Procedural Background

The Administrator issued an emergency revocation order alleging respondent violated 14 C.F.R. § 43.12(a)(1) by placing in the aircraft's logbook the sticker Mr. Jacques signed indicating he had performed an annual inspection.⁹ Respondent waived the expedited procedures normally applicable to emergency cases, and the case proceeded to hearing on March 20, 2012.

At the hearing, FAA aviation safety inspector Randy Shafer testified about the various types of aircraft inspections. He noted the primary difference between a 100-hour and an annual inspection is who possesses signatory authorization.¹⁰ In this regard, Inspector Shafer stated a certificate holder with an IA has the authority to sign-off an annual inspection as well as a 100-hour, but an A&P mechanic may *only* complete a 100-hour inspection.¹¹ An IA must perform the annual inspection personally, and cannot rely on a 100-hour inspection completed by

⁷ Exh. A-1.

⁸ Id.

⁹ The Administrator revoked Mr. Jacques's A&P certificate and IA for signing the certification for the annual inspection without actually seeing the aircraft. Tr. 96.

¹⁰ Tr. 98.

¹¹ Tr. at 146-48, 151.

someone else.¹² Even though an A&P certificate holder may not complete any part of an annual inspection, an A&P mechanic completes the 100-hour inspection using the same checklist an IA uses to complete an annual inspection.¹³ Inspector Shafer also opined if respondent had mailed the sticker to Mr. Teat, rather than placing it in the logbook himself, the Administrator would not have charged him with intentional falsification, because respondent would not have caused a false record to be placed in the logbook.¹⁴

¹² Tr. 145. Inspector Shafer cited 49 C.F.R. part 43, appendix D, for the inspection checklist applicable to both 100-hour and annual inspections. Neither Inspector Shafer nor the Administrator's attorney could identify a regulation that defined "inspection" as requiring an IA to perform a visual review, but instead cited the practical test standards. The relevant excerpt from the record states as follows:

Q. Inspector Shafer, do the regulations actually define what inspection means?

A. I don't think there's a definition in the regulations.

Q. Is there a definition in another FAA order?

A. There are definitions documented in some of our standards and the United States Department of Transportation has practical test standards which are across the board, equal to all applicants within the Agency. As far as A&Ps and pilots, they're all tested to a certain standard. And it does contain a definition there.

Q. Could you explain just a little bit more what the practice test standards are, what they're used for, who promulgates them?

A. The practical test standards are developed to create an unbiased and equal examination level to all applicants. They have to be tested to a certain level and they're contained within this practical test standard. And I believe it's right in the beginning where it defines inspection and what the procedures and policies are.

Q. Inspector Shafer, do you recall what the definition of an inspection is in the practical test standards?

A. I don't really – don't like to quote – in my own words, I – it's – I think it's got something like visually examine something.

Tr. 152-53.

¹³ Tr. 146, 149-52.

¹⁴ Tr. 164-65, 167. Inspector Shafer stated if respondent "would have stopped, went back to Mr. Jacques and said, 'My portion's done; the rest is up to you, and you can mail the sticker,' and so on," then the Administrator would not have charged respondent with intentional falsification. Tr. 167. Inspector Shafer then clarified, "But by knowingly having this logbook endorsement in his hands and taking it back to the owner and putting it in the aircraft, that's where this [charge] came from. I mean, that's why we're here today. He caused that entry to be part of the

C. Law Judge's Oral Initial Decision

In his oral initial decision, the law judge made express credibility findings concerning the witnesses' testimony. The law judge found credible respondent's testimony that he did not intend to falsify any records. The law judge also credited the testimony of the many witnesses, including the Administrator's own witnesses, who found respondent to be meticulous, full of integrity, and possess an admirable work ethic. The law judge stated Inspector Shafer acknowledged part 43, appendix D indicated the checklist for a 100-hour inspection was identical to that which applied to an annual inspection.

At the conclusion of the hearing, the law judge determined the Administrator failed to establish respondent possessed the state of mind to intentionally falsify the record, and therefore failed to fulfill the third prong of the Hart v. McLucas intentional falsification test.¹⁵ First, the law judge found the entry in the record was false, as Mr. Jacques did not physically inspect the aircraft and conceded after FAA notification that he improperly performed his annual inspection. Second, the law judge noted the parties did not dispute the materiality of the entry. Lastly, however, after making a credibility determination favorable to respondent, the law judge determined the Administrator failed to prove respondent knew the entry was false. Specifically, the law judge stated:

[The Administrator did not prove] that [r]espondent knew that Mr. Jacques did not perform the inspection referred to in the maintenance record ... I found [r]espondent's testimony to be credible, that he believed that all inspections that were required to be done for the annual and the inspection he'd done had been done.¹⁶

(..continued)
permanent maintenance record entry." Id.

¹⁵ Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976). A discussion of the three-part test is included infra.

¹⁶ Initial Decision at 297.

As a result, the law judge reversed the Administrator's revocation order.

D. Issues on Appeal

The Administrator appeals the law judge's decision, on several bases. The Administrator argues the law judge erred in determining respondent did not possess the state of mind for intentional falsification. In this regard, the Administrator argues that previous intentional falsification cases require the Board to reverse the law judge's decision,¹⁷ that the law judge incorrectly applied established Board precedent concerning willful disregard in intentional falsification cases,¹⁸ and that respondent's conduct amounted to common law fraud. The Administrator contends the evidence in this case supports a finding of intentional falsification. Finally, the Administrator urges the Board to affirm the complaint on a public policy basis—that upholding the law judge's decision would “open the door for A&P mechanics who do not hold an IA ... to orchestrate those inspections in such way [*sic*] that would result in an intentionally false annual inspection certification entry while simultaneously allowing those mechanics to claim ignorance of the pertinent regulations as an acceptable defense.”¹⁹ Respondent, who now proceeds *pro se*, disputes the Administrator's appeal and urges us to affirm the law judge's decision.

¹⁷ The Administrator references Singleton v. Babbitt, 588 F.3d 1078, 1082-83 (D.C. Cir. 2009), and Administrator v. Dillmon, NTSB Order No. EA-5528 (2010), in support of this argument.

¹⁸ The Administrator cites Administrator v. Boardman, NTSB Order No. EA-4515 (1996), and Administrator v. Cooper, NTSB Order No. 5538 (2010), aff'd, 660 F.3d 476 (D.C. Cir. 2011), in support of this argument.

¹⁹ Appeal Br. at 28.

2. *Decision*

A. *Intentional falsification*

We apply the three-part test established in Hart v. McLucas in intentional falsification cases. As such, the Administrator must prove the respondent made (1) a false representation, (2) in reference to a material fact, and (3) had knowledge of its falsity.²⁰ Of the three prongs, the Administrator only contests the third prong of the test.²¹

1. *Credibility findings: Singleton and Dillmon*

In intentional falsification cases, the law judge's findings regarding credibility of the witnesses, including that of the respondent if the respondent testifies, are essential to the case. In Administrator v. Dillmon, NTSB Order No. EA-5528 (2010),²² we explicitly instructed law judges to make specific factual findings—especially with regard to credibility—when a respondent asserts, as a defense, he or she believed the answer or information provided on a document was correct. The District of Columbia Circuit's opinion stated the Board must complete such an analysis, in light of the three-part Hart v. McLucas test. As a result, and as we emphasized in Dillmon and Singleton, credibility findings from our law judges are necessary in intentional falsification cases, because the Board must consider a respondent's subjective understanding of questions on medical certificate applications. Similarly, we find this subjective intent element enumerated in Dillmon and Singleton, as it relates to knowledge under the third prong of the Hart v. McLucas test, applicable in a mechanic logbook falsification case as well.

²⁰ Hart, 535 F.2d at 520; Administrator v. Dillmon, NTSB Order No. EA-5528 at 3 (2010).

²¹ The parties originally contested prongs one and three. The law judge determined the Administrator established the first prong and the Administrator did not challenge that determination; therefore, we need not address this prong on appeal.

²² We issued Dillmon in response to a remand from the Court of Appeals for the D.C. Circuit. Dillmon v. NTSB, 588 F.3d 1085, 1094 (D.C. Cir. 2009).

Therefore, in this case, the three-prong Hart standard required the law judge to determine whether respondent's testimony that he lacked the intent to insert a false entry in the helicopter's logbook was credible.

We defer to the credibility findings of our law judges in the absence of a showing such findings are arbitrary and capricious.²³ In the case *sub judice*, the law judge found respondent credible. In particular, he credited respondent's testimony that he thought it was permissible to place the pre-signed sticker in the logbook after Mr. Jacques opined the aircraft passed its annual inspection. The law judge believed this testimony, based on his observation of respondent's demeanor during questioning at the hearing and the Administrator's lack of evidence to the contrary.²⁴ Likewise, the law judge found Mr. Jacques generally credible during his testimony regarding the knowledge prong, specifically noting "the Administrator did not attempt to clarify or impeach Mr. Jacques testimony in any way. Of greater import is the fact that the Administrator does not attempt to impute Mr. Jacques' alleged knowledge of wrongdoing to [r]espondent."²⁵ The law judge also noted respondent's character witnesses, including Mr.

²³ Administrator v. Porco, NTSB Order No. EA-5591 at 13-20 (2011), aff'd, Porco v. Huerta, 472 Fed.Appx. 2 (D.C. Cir. 2012) (per curiam).

²⁴ In his initial decision, the law judge provided a detailed description of his credibility determination:

I asked Mr. Reynolds specific questions so that I could gauge his credibility. He answered each of my questions directly. He was not evasive or deceptive. He specifically faced me and answered each question without diverting his eyes or turning away. I found him to be credible. I believe him when he testified that he did not knowingly cause to be made a fraudulent or intentionally false entry in the maintenance record of [the aircraft].

Initial Decision at 294-95.

²⁵ Id. at 290.

Jacques, “praise[d] [respondent’s] honesty and his integrity and his work ethic.”²⁶ These credibility findings served as part of the law judge’s rationale for determining the Administrator did not fulfill the burden of proof on the intentional falsification charge. The law judge clearly articulated these credibility findings based upon the witnesses and evidence before him at the hearing. Therefore, we find his credibility determinations were not arbitrary and capricious.

2. Sufficiency of the evidence

The Administrator also contends the evidence established respondent intentionally falsified the logbook entry concerning the annual inspection. We agree with the law judge’s conclusion that the evidence did not establish respondent had the intent to falsify the logbook entry, as the Administrator did not provide the testimony of the FAA inspector who investigated the case against respondent. The inspector, Randy Stromski, had interviewed respondent and Messrs. Jacques and Teat concerning the logbook entry. However, Inspector Stromski did not testify at the hearing. Therefore, the Administrator failed to provide evidence to rebut respondent’s testimony that he did not intend to falsify the logbook entry.

Furthermore, the Administrator provided no evidence to dispute the contentions of respondent and Mr. Jacques, contained in their responses to Inspector Stromski’s letters of investigation.²⁷ The statements, both of which contain a detailed summary of the facts, corroborate the assertion that Mr. Jacques intended to travel to Indiana to complete the inspection.

²⁶ *Id.* at 294.

²⁷ Exhs. R-2 and R-9.

3. *Willful disregard*

The Administrator argues this case is analogous to Administrator v. Boardman and Administrator v. Cooper.²⁸ We disagree. Both Boardman and Cooper involved a respondent's completion of a medical certificate application. In both cases, the respondents admitted they did not read the questions on the application, but instead merely checked "no" in response to each question. In those opinions, we held a knowing failure to read the questions on the application amounted to intent to falsify.²⁹ We rejected the notion that a failure to read the questions excused false answers. The District of Columbia Circuit upheld this reasoning in Cooper.³⁰

In the case at hand, respondent does not contend he failed to read a maintenance record or logbook entry. Instead, he asserts, and the evidence corroborates, Mr. Jacques signed a sticker indicating compliance with a required annual inspection, and respondent placed the sticker in the logbook, believing his action permissible. Therefore, this case is distinguishable on the facts from Boardman and Cooper.

Assuming *arguendo* the facts were similar enough to warrant comparison, the willful disregard standard functions as a subset of the intentional falsification standard, such that it still requires an examination of the respondent's state of mind. In cases involving an allegation of willful disregard, our law judges must assess and make relevant credibility findings as to whether a respondent's state of mind at the time of the conduct amounted to purposeful ignorance. In this case, the law judge determined respondent did not exhibit a willful disregard, but instead believed his placement of the sticker in the logbook, under the direction of Mr. Jacques, was

²⁸ Supra note 18.

²⁹ See Boardman, NTSB Order No. EA-4515 at 3-5; Cooper, NTSB Order No. EA-5538 at 10-11.

³⁰ Cooper v. NTSB, 660 F.3d 476, 482-83 (D.C. Cir. 2011).

permissible. As discussed above, we do not find the law judge's credibility determination in this regard arbitrary and capricious.

4. *Fraud*

The Administrator also argues respondent's conduct amounted to common law fraud. In order to prove respondent engaged in fraud, the Administrator must meet a five-prong standard: (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) with action taken in reliance upon the representation.³¹ Since we found the Administrator failed to prove respondent placed the sticker in the logbook with knowledge of its falsity, it is therefore impossible for the Administrator to meet the five-prong test for fraud.

B. *Public policy considerations*

Finally, we reject the Administrator's public policy argument. The Administrator contends affirmation of the law judge's decision in this case will result in mechanics without IA privileges performing annual inspections. In such cases, if the Administrator chooses to proceed with a charge of intentional falsification, the Administrator must be prepared to meet his burden of proof. If the Administrator does not have adequate evidence to prove intentional falsification, the Administrator may choose to pursue charges involving violations of other maintenance regulations.³² In the case *sub judice*, the Administrator only charged respondent with intentional falsification and subsequently failed to meet his burden.

³¹ See Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976).

³² Various sections within 14 C.F.R. part 43 prohibit incorrect maintenance entries. For example, 14 C.F.R. §§ 43.2, 43.5(a), 43.9, and 43.11 all include detailed requirements concerning maintenance records.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and
2. The law judge's decision 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: *

MICHAEL P. HUERTA, *
ACTING ADMINISTRATOR, *
FEDERAL AVIATION ADMINISTRATION, *

Complainant, *

v. *

Docket No.: SE-19191
JUDGE MONTAÑO

RANDY HERBERT REYNOLDS, *

Respondent. *

* * * * *

Charlotte Mecklenburg Courthouse
East 4th Street
Courtroom #6350, 6th Floor
Charlotte, North Carolina

Wednesday,
March 21, 2012

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

BEFORE: ALFONSO J. MONTAÑO
Acting Chief Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

BRIANA MARTINO, Esq.
Federal Aviation Administration
Great Lakes Region
Office of the Regional Counsel
2300 East Devon Avenue
Des Plaines, Illinois
(847) 294-8275

On behalf of the Respondent:

ANDREW M. RIOLO, Esq.
Attorney at Law, P.C.
South Park Towers
6000 Fairview Road
12th Floor, Suite 1200
Charlotte, North Carolina
(704) 552-4022

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ORAL INITIAL DECISION AND ORDER

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ADMINISTRATIVE LAW JUDGE MONTAÑO: This has been a proceeding under the provisions of 49 USC Section 44709, formerly 609 of the Federal Aviation Act, and the provision of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board.

Randy Herbert Reynolds, the Respondent, appealed the Administrator's Emergency Order of Revocation dated October 6,

1 2011. The Administrator filed the Emergency Order as the
2 complaint in this case on October 18, 2011. The Administrator
3 alleged the Respondent had violated Section 43.12(a)(1) of the
4 Federal Aviation Regulations, which provide that, "No person may
5 make or cause to be made any fraudulent or intentionally false
6 entry in any record or report that is required to be made, kept or
7 used to show compliance with any requirement under this part."

8 This matter has been heard by me, as the Administrative
9 Law Judge assigned to the case. And, as provided by the Board's
10 Rules, I am issuing an Oral Initial Decision in this case.

11 Pursuant to notice, this matter came on for hearing in
12 Charlotte, North Carolina on March 20 and the 21st of 2012. The
13 Administrator was represented by Briana Martino, Esquire, Great
14 Lakes Region. The Respondent was represented by Andrew M. Riolo,
15 Esquire. The parties were afforded full opportunity to offer
16 evidence, to call, examine and cross-examine the witnesses and
17 make arguments in support of their respective positions.
18 Mr. Reynolds has been in the courtroom throughout the hearing.

19 I will not discuss all of the evidence in detail, but I
20 will discuss it at some length. I have, however, considered all
21 of the evidence, both oral and documentary evidence in this case.
22 That which I do not specifically mention is viewed by me as either
23 being corroborative or as not materially affecting the outcome of
24 this case.

25 As to any agreements between in the parties, in his

1 October 28, 2011 answer to the Administrator's complaint, the
2 Respondent admits paragraph 1, and he admitted that he performed
3 maintenance on helicopter November-9561-Foxtrot, but essentially
4 denies the rest of that paragraph. He also admits -- appears to
5 admit portions of -- well, let me check that. He admits
6 paragraphs 3, 6, 8, 9, and 10, which is admitted upon information
7 and belief. He denies the other paragraphs in the complaint.

8 The Administrator moved for the admission of certain
9 exhibits during these proceedings. The Administrator moved for
10 the admission of Exhibit A-1, A-7, and A-8, which were admitted
11 without objection from the Respondent. The Respondent moved for
12 the admission of Exhibits R-3, R-5, R-4, R-6, R-8, R-9, and as we
13 discussed this morning before going on the record, the
14 Respondent's counsel did ask questions relative to Exhibit A-2,
15 which is a statement from Randy Reynolds to -- or communication
16 from Randy Reynolds to Randy Stromski. There have been questions
17 asked of witnesses in this case, relative to that exhibit. I had
18 marked it as R-2, and it appears from our conversations with the
19 parties, that Mr. Riolo had intended to admit it -- to move for
20 admission; that was not moved. It was identified and discussed in
21 our discussions prior to going on the record. On the record, the
22 parties agreed that there is no objection as to the admission of
23 Exhibit A-2. I will call it Exhibit R-2, as that is what I had
24 marked it as in yesterday's hearing.

25 As far as the testimony in this case, what I'll do is

1 I'll talk about the testimony of the case. It is a fact-intense
2 case and the facts are very important in this case. I will ask
3 the parties to bear with me. I'm going to go into detail about
4 what the parties -- what the witnesses said. Then what I'm going
5 to do is apply what the witnesses said to the law I must apply in
6 the case in order to explain the decision I had to make in this
7 case, or I found I had to make in this case.

8 The Administrator first called to testify, Mr. David
9 Teat. Mr. Teat testified that he owns and operates Heartland
10 Helicopter. His company owns the helicopter at issue in this
11 case, 9561F. He testified that he was vaguely familiar with the
12 Federal Aviation Regulations. He testified that he and his son
13 and one other person own Heartland Helicopters, and started this
14 business with one helicopter for the use of crop spraying. He and
15 his son and another person own it, as I indicated. They used the
16 helicopter, if I understood his testimony, for practice, and then
17 used it for about half a day of spraying before it required an
18 annual inspection.

19 He testified that he obtained Respondent's name from the
20 internet and spoke to him over the phone and via e-mail. And he
21 first hired the Respondent to remove the engine from 9561F, so
22 that it could be rebuilt by another party, and then he asked
23 Mr. Reynolds to reinstall that engine. He also purchased parts
24 from him.

25 Mr. Teat subsequently hired Respondent to do the annual

1 inspection on the helicopter and Mr. Teat stated that he does not
2 know what specifically is required in an annual inspection, but he
3 knew that it had to be done, and it required an expert to perform
4 the inspection. He testified he understood that the Respondent
5 did not have inspection authorization. He testified that the
6 Respondent indicated that he would have Mr. Jacques help him with
7 the inspection. Mr. Teat testified that he did not see
8 Mr. Jacques work on the helicopter, and was told by the Respondent
9 that he was not sure, at one point, whether or not Mr. Jacques
10 would actually travel to Indiana.

11 He identified and authenticated Exhibit A-8, which
12 describes his research and into the -- documenting the helicopter
13 logbook via paste-on or sticky labels. He also testified that A-7
14 was the purchase order prepared for work to be done on
15 Respondent's helicopter, and the payment that was supposed to be
16 made to the Respondent for his travel and hotel expenses.
17 Mr. Teat testified he did not pay for travel or hotel expenses for
18 Mr. Jacques. He was charged for the services of Respondent but
19 was not charged for the services of Mr. Jacques.

20 He testified he received the stick-on description and
21 signature for the annual from Mr. Jacques at the end of March
22 2011, and Respondent came up to Indiana and placed, after doing
23 some work on the helicopter, placed the stick-on log entry into
24 the logbook.

25 He testified he did not ask Mr. Jacques to sign off on

1 an inspection without working on his helicopter. And he
2 reiterated that Mr. Reynolds, the Respondent, told him he would
3 take care of the annual inspection, and that he would have
4 Mr. Jacques sign off on the annual inspection.

5 On cross-examination, he indicated he was not familiar
6 with the FARs at all. He testified his business was in good
7 standing, and was a by-the-book operation, and had filed all the
8 necessary reports with the necessary state authorities. He was
9 impeached by Respondent's exhibit, indicating that the business
10 had not filed the reports. Mr. Teat testified that the business
11 was still in existence, but it was inactive, as the only aircraft
12 they had, had crashed and it was now in the possession of the NTSB
13 for investigation of that crash.

14 He admitted he did not pay the Respondent for his
15 services, but he testified he found that the Respondent's work was
16 professional. He testified that because time was running out to
17 complete the inspection, that he was reluctant to send his
18 logbooks to Mr. Jacques, who had been give a copy of the logbooks.
19 Mr. Jacques had apparently wanted to see the actual original
20 logbooks. He testified again, that he had done some research and
21 talked to mechanics and aircraft inspectors and they informed him
22 that an annual inspection could be typed on a sticky label or
23 sticky paper and sent to him to be put in the logbooks, that
24 Mr. Jacques or Mr. Reynolds, the Respondent, did not need to come
25 to Indiana to put those entries into the logbook. He testified

1 the Respondent did not comply with that request, but instead came
2 up to Indiana from North Carolina at his own expense to ensure
3 that the inspection was proper before putting the documents in the
4 logbook.

5 Thomas Jacques was then the Administrator's next
6 witness. He has an air transport with a pilot's certificate as
7 well as a multi-engine rating. He had an airframe and powerplant
8 certificate, which he obtained in 1980. He obtained his
9 inspection authority 3 years later after receiving his airframe
10 and powerplant certificate. He has completed 250 to 300 annual
11 inspections. He has only signed off on an annual inspection once
12 without physically inspecting the aircraft. That one time is
13 specifically the inspection initial in this case.

14 He was contacted by the Respondent regarding performing
15 the annual inspection on the Heartland helicopter. He researched
16 the airworthiness directives that were required for the Heartland
17 helicopter in the FAA website, and on a private service. He then
18 asked for the logbooks to determine if the helicopter was in
19 compliance with all airworthiness directives. He stated that he
20 would have next gone, and intended to go, up to Indiana to inspect
21 the logbooks to ensure that the rotorcraft was in compliance with
22 all of the airworthiness directives. As he had testified that
23 this was -- working with Mr. Reynolds was part-time only -- not
24 working with Mr. Reynolds -- but working as an A&P with inspection
25 authorities was a part-time business that he had separate and

1 distinct from his full-time job. Because of problems with that
2 full-time job, he was unable to go to Indiana, but, again, he was
3 provided with copies of the logbooks. He went through the
4 logbooks, found compliance with all the airworthiness directives,
5 but one. He informed the Respondent that since he could not go to
6 Indiana, Respondent would have to look at the actual logbook to
7 find out if that one airworthiness directive was addressed and
8 complied with. He testified he never went to Indiana and never
9 actually saw the helicopter. That was the testimony of
10 Mr. Jacques.

11 He testified the Respondent typed the annual logbook
12 entry, but Mr. Jacques would not sign it until the Respondent
13 confirmed that that single airworthiness directive in question had
14 been addressed, and compliance had been documented. When
15 Respondent informed him from Indiana that the rotorcraft was in
16 compliance with the airworthiness directive in question,
17 Mr. Jacques signed the stick-on annual inspection, and FedEx'd it
18 to the Respondent in Indiana. He testified that he did not know
19 what the Respondent did with the stick-on entry once he received
20 it.

21 He testified that he did not know that what he did was
22 improper until he was informed by the FAA aviation inspector that
23 it was not. He believed a 100-hour inspection was required to be
24 conducted in conjunction with an annual inspection. He
25 subsequently lost his A&P and his inspection authority as a result

1 of an investigation and action by the FAA against him, relative to
2 his conduct in this case -- or not this specific case, but the
3 facts and issues that are the same in this case.

4 On cross-examination, he again testified that a 100-hour
5 -- an annual inspection involved the same tasks, and the only
6 difference was the paperwork. In the 30 years he has been an A&P
7 with inspection authority, he thought that it was appropriate to
8 perform a 100-hour inspection and an annual inspection at the same
9 time. He testified that the only real difference between the two
10 inspections was the annual inspection required a review of the
11 airworthiness directives and compliance, and the A&P with the
12 inspection authority had to ensure that there was compliance with
13 all airworthiness directives.

14 He testified he knew Respondent for about 20 years, over
15 20 years, and that he had encouraged him to obtain his A&P
16 certificate when they both worked for Mr. Kelso. He found
17 Respondent's work ethic to be excellent. He testified Respondent
18 was meticulous and agreed that the Respondent was honest and a man
19 of integrity. He testified that he did not believe the Respondent
20 would commit fraud or make an intentionally false representative
21 or misrepresent anything in a logbook, or make an entry in a
22 logbook that was false or intentionally false.

23 He testified about the investigation that resulted in
24 the action against him and his interactions with Aviation
25 Inspector Randy Stromski. As to the specific Order of Revocation

1 in this case, he addressed paragraph 4 and specifically denied
2 that he and the Respondent agreed to have him, Mr. Jacques, make a
3 maintenance entry indicating an annual inspection had been
4 performed on N9561F, knowing that Mr. Jacques had no intention to
5 travel to Indiana to actually perform an annual inspection or
6 physically inspect 9561F.

7 He specifically denied the contents of paragraph 8. He
8 denied that he provided a signed copy of the annual inspection
9 entry. He only provided it when Respondent informed him that the
10 outstanding airworthiness directive had been addressed and found
11 to be in compliance. He testified that he did not physically
12 inspect 9561F, but had inspected the logbooks extensively, to
13 determine if the helicopter -- determined that the helicopter was
14 in compliance with all airworthiness directives.

15 As to paragraph 13, he testified that he did not believe
16 the Respondent caused or intentionally caused a false entry to be
17 made in the logbooks. And he stated that, over a period of 23
18 years as an A&P, he believed that an annual and a 100-hour were
19 the same, as they required the same work. He believed that if the
20 Respondent performed the 100-hour inspection, he would sign off on
21 the annual inspection as long as he determined that the aircraft
22 was in compliance with all airworthiness directives.

23 He believed that he did not have to actually put his
24 hands on the aircraft because the Respondent had already performed
25 the 100-hour inspection, which is identical to the annual

1 inspection. He said, in this case, he ensured compliance with all
2 airworthiness directives and signed the annual inspection sticker.
3 He did not believe he had done anything wrong at that point, until
4 he was informed of it by Aviation Inspector Stromski. He
5 testified he thought Mr. Reynolds, the Respondent, was honest, and
6 if they had done something wrong, it was caused by a
7 misunderstanding and that there was no intent to deceive.

8 Aviation Inspector Randy Alan Shepherd then testified
9 for the Administrator -- sorry, Shafer -- apologies Inspector
10 Shafer. Inspector Shafer has an A&P certificate with inspection
11 authority. He described the difference between the 100-hour
12 inspection and the annual inspection. He essentially testified
13 that they were the same, except for slight differences. The
14 paperwork in the annual had to be signed off by an A&P with
15 inspection authority, or a certificated repair station.

16 He testified that Part 43 of the regulations, Appendix
17 D, provided checklists, which include a minimum that the
18 individuals performing the inspections had to follow for the 100-
19 hour and annual inspections. So there could be more extensive
20 checklists, but Part 43, Appendix D provided the minimum that had
21 to be done to complete the 100-hour and annual inspections.

22 He testified that the annual required, for example,
23 opening inspection panels, checking and cleaning the engine,
24 inspecting the landing gear, et cetera, and other tasks, which
25 required hands-on type of inspection of the aircraft, or work on

1 the aircraft. He testified that an A&P with inspection authority
2 cannot perform an annual inspection by proxy.

3 He testified that there was no specific definition of
4 what an inspection was in the Federal Aviation Regulations, but he
5 indicated that there was a definition of what an inspection is in
6 the practical test standard upon which all A&P candidates are
7 tested. He asked to read the standard and then was asked to
8 recite it from memory to refresh his recollection. He attempted
9 to do so, and I do not mean this as a criticism, but just an
10 observation and human nature, he had difficulty reciting what he
11 had just read into the record. So, for me, that is -- makes it
12 somewhat understandable that, to some degree, an A&P with
13 inspection authority or A&Ps out in the field may not know the
14 definition of inspection as it's spelled out in the practical test
15 standards, which, for example, Mr. Jacques took 30 years ago, and
16 Mr. Reynolds, the Respondent, took quite some time ago.

17 He also testified as to the sanction guidelines, and the
18 guidelines call for revocation in this case. I found his
19 testimony to be credible. I found Mr. Jacques' testimony to be
20 generally credible. There were some issues that I felt that he
21 did not answer directly, but he was generally credible. I cannot
22 cite anything to say that it was not credible. And I found that
23 Mr. Teat, with the limited knowledge he had and limited
24 information relative to the facts of the case, to be credible as
25 well.

1 The Respondent then presented his witnesses.
2 Mr. Winegardner testified as a character witness for the
3 Respondent and highly praised his honesty and competence in the
4 work Respondent had performed on his helicopter. Respondent has
5 worked on his helicopter over the past 4 or 5 years. He testified
6 that he did not believe that the Respondent would make an
7 intentionally false entry in the record. And he never attempted
8 to deceive him. He traveled from New York at his own expense to
9 testify on behalf of Mr. Reynolds.

10 He testified that he had another company that performed
11 maintenance for his other aircraft and they informed him that his
12 helicopter logbook entries all seemed to be in order after
13 Mr. Reynolds, the Respondent, performed the work on the
14 helicopter. I found him to be credible. I was impressed that he
15 traveled from New York at his own expense. And he also offered to
16 provide specifics once in response to my question. I had
17 indicated that some information may have been helpful. He was
18 willing to provide that information as soon as possible, but that
19 I did not ask him to provide the additional information.

20 Lloyd Kelso is an attorney-at-law. He has known
21 Respondent since early 1990s, as the Respondent worked with his
22 father in his father's helicopter business. Both he and
23 Mr. Jacques worked with his father. He has never known Respondent
24 to commit fraud or intentionally falsify a record. Respondent has
25 an excellent reputation as a mechanic. In response to my

1 question, he indicated that work performed by Respondent in his
2 father's business would have been reviewed and approved by
3 Mr. Jacques, as an A&P with inspection authority. That was his
4 understanding of how it was done.

5 Respondent then testified on his own behalf. He
6 testified that it had always been his dream to fly and work on
7 helicopters. He previously worked construction and was able to
8 travel the world, operating a tunneling machine. He became tired
9 of traveling, returned to North Carolina and began taking flight
10 lessons from Mr. Kelso. He also subsequently went to work for
11 Mr. Kelso and obtained his pilot's certificate and A&P
12 certificate. He indicated that that was difficult, as he found
13 out in his 30s that he was dyslexic.

14 His first contact with Mr. Teat was in August 2011, when
15 he removed the engine from his helicopter and then subsequently --
16 well, excuse me, I think that was August 2010 -- removed the
17 engine from the helicopter and then subsequently reinstalled the
18 engine. Mr. Teat obtained his name from the internet. He said
19 that he did not advertise on the internet and that he did not put
20 any advertisement on the internet.

21 The Respondent testified he was subsequently asked by
22 Mr. Teat to perform the annual inspection on 9561F, which he
23 agreed to perform with the help of Mr. Jacques. He testified that
24 he had worked with Mr. Jacques in the past. He would perform the
25 inspection and Mr. Jacques would perform the AD research and

1 compliance and would comply with annual inspection paperwork. He
2 testified that Mr. Jacques would usually come to the aircraft when
3 they worked together.

4 He was specifically asked about the Order of Revocation.
5 He denied paragraph 4, because he testified that there was never
6 agreement between he and Mr. Jacques for Mr. Jacques not to come
7 to Indiana. He denied that they agreed to have Mr. Jacques make a
8 maintenance entry indicating an annual inspection had been
9 performed on 9561F, knowing that Mr. Jacques had no intention of
10 traveling to the location of the aircraft in Indiana. He denied
11 that that took place.

12 As to allegation 12, he denied the allegation, saying
13 that he knew that Mr. Jacques had researched and applied -- had
14 researched the applicable airworthiness directives and reviewed
15 the logbooks to determine 9561F was in compliance with all
16 airworthiness directives.

17 As to paragraph 11, he testified that he -- that Mr.
18 Jacques did diligently go through the copies of the logbooks for
19 9561F, which were a part of the annual inspection.

20 As to the allegations in paragraph 12, he denied the
21 allegations, saying that he knew that Mr. Jacques had researched
22 the applicable airworthiness directives. He questioned one
23 airworthiness directive, which -- and Mr. Jacques had the
24 Respondent physically check that airworthiness directive on the
25 helicopter, and the original logbooks. And when that was

1 confirmed as being in compliance, Mr. Jacques signed and sent the
2 annual inspection sticker.

3 As to allegation 13, he testified it was not in his mind
4 to make or cause to make an intentionally false entry in the
5 maintenance records of 9561F. He did not sign off on the annual
6 inspection nor did he have the inspection authority. So, it was
7 not his false statement. He did not think it was a false
8 statement when he placed the sticker, certifying the annual
9 inspection in the logbook. He thought the inspection had been
10 completed. He performed the physical inspection and Mr. Jacques
11 performed the research and inspected the logbooks for compliance
12 with airworthiness directives.

13 He testified that A-2 is his letter to Randy Stromski,
14 in which he explained what happened. He had been cooperative with
15 Mr. Stromski. He informed Mr. Stromski that he and Mr. Jacques
16 had planned to travel to Indiana relative to the inspection. He
17 also indicated that, subsequently, Mr. Jacques could not go to
18 Indiana, but he, the Respondent, went at his own expense.

19 He was asked on numerous times by his counsel, whether
20 he intended to defraud or make a misrepresentation in the records.
21 And he replied that he had no such intent.

22 On cross-examination, he was asked if he had ever signed
23 off on a 100-hour inspection without looking at the aircraft. He
24 responded that he had not. On re-cross, I believe he testified
25 that when he worked together with Mr. Jacques, as mentioned

1 earlier, Mr. Jacques would usually come to the site of the
2 inspection.

3 That is all the testimony in the case. And now I'm
4 going to apply it to the standard that I have to decide this case.
5 The Board has adhered to a three-pronged standard to provide
6 falsification claim. The Administrator must prove by a
7 preponderance of reliable, probative and credible evidence that
8 the pilot -- not the pilot in this case, but the Respondent, an
9 A&P mechanic, made a false representation and, in this case, an
10 entry in a record that has to be kept; that entry was in reference
11 to a material fact; and three, that entry was made with knowledge
12 of the falsity of that fact at the time it was made, or caused to
13 be made. The three-part test derives from *Hart vs. McLucas*, 535
14 F.2d, 516, 519, Ninth Circuit decision in 1976.

15 The Board has held that a statement is false concerning
16 material fact under this standard, if the alleged false fact could
17 influence the Administrator's decision concerning the certificate.
18 But the Board has also held in other cases that these three prongs
19 can be proven by circumstantial evidence.

20 The first issue was whether or not there was a false
21 entry in the record in this case. The alleged false entry in this
22 case is the March 16, 2011 entry, documented in Exhibit A-1. The
23 document reads, "I certify that this aircraft has been inspected
24 I/A/W an annual inspection and was determined to be in airworthy
25 condition on this date. Signed by Thomas Jacques." Mr. Jacques

1 testified he did not know the entry was improper until he was
2 informed that the FAA considered it false by Mr. Stromski. He
3 testified he believed this was an acceptable entry over the 30
4 years he had been an A&P with inspection authority. However, he
5 testified he had never made such an entry without actually looking
6 at or placing his hands on the aircraft, before the incident in
7 this case. He testified that he now knows that it was not a
8 proper entry, and has lost his A&P and his inspection authority
9 certificate because of that. Thus, there is a false entry in this
10 case.

11 The question becomes, did the Respondent cause the false
12 entry? The Administrator does not allege that he made the false
13 entry, but alleges that he caused the false entry to be made in
14 the maintenance records in this case. The evidence indicates that
15 he printed out the entry, but he did not sign it. Both the
16 Respondent and Mr. Jacques rejected the allegation of paragraph 4
17 of the Emergency Revocation that they agreed to have Mr. Jacques
18 make a maintenance entry indicating an annual inspection had been
19 performed on 9561F knowing that the Respondent and Mr. Jacques had
20 no intention of having Mr. Jacques travel to the location of the
21 aircraft in Indiana to actually perform an annual inspection. The
22 Administrator offered no evidence to support this allegation and
23 his own witness, Mr. Jacques, denied that such an agreement ever
24 took place. Further, Mr. Jacques testified he refused to sign the
25 entry that had been prepared by the Respondent until he was sure

1 that all of the airworthiness directives had been complied with.

2 Based on the evidence before me, I do not find that the
3 Administrator's proved the allegation in paragraph 4 by a
4 preponderance of evidence. Likewise, I do not find that the
5 Administrator's advanced any evidence to prove that the allegation
6 in paragraph 7, that at the time Mr. Jacques' false entry was
7 made, the Respondent and Mr. Jacques agreed that Mr. Jacques would
8 make the maintenance entry, indicating an annual inspection had
9 been performed on 9561F, knowing that Mr. Jacques did not actually
10 perform the annual inspection. I don't have any evidence to prove
11 that. Certainly both Mr. Jacques and the Respondent deny that
12 occurred.

13 Thus, while I must find there was a false entry in the
14 maintenance records of 9561F, I do so because Mr. Jacques
15 testified that he now believes it was a false entry. But that
16 false entry was not created by the Respondent. It was created by
17 Mr. Jacques. The question is, did Respondent cause Mr. Jacques'
18 false entry to become part of the maintenance record in 9561F?
19 Respondent admits that he did affix Mr. Jacques' March 16 entry
20 into the maintenance of 9561F. As to whether or not he knew the
21 entry was false at the time he caused the entry to be affixed to
22 the record will be discussed later in this analysis. I find that
23 the preponderance of the evidence established that a false entry
24 was created by Mr. Jacques and physically affixed by the
25 Respondent to the maintenance record of 9561F.

1 The second question, is that entry material? I don't
2 believe that there's a dispute by Respondent that the entry is
3 material. The entry in the maintenance records are relied upon by
4 the FAA, or they are entries which are required to be made or kept
5 to use to show compliance with FAA regulations or requirements.
6 So, therefore, I find that the entry is indeed material.

7 This leads me to the more difficult issue of whether or
8 not the Respondent caused to be made the false or intentionally
9 false entry in the maintenance record of 9561F, with knowledge of
10 the falsity of that fact of when he made -- when he caused the
11 entry to be made. As I previously found, the Administrator has
12 not advanced any evidence to prove the alleged agreements between
13 Respondent and Mr. Jacques to make false entries, as alleged in
14 paragraphs 4 and 7 of the Emergency Revocation.

15 The Administrator named Aviation Inspector Randy
16 Stromski as a witness in this case, and he was to provide
17 testimony as to his investigation, including discussions with the
18 Respondent and his review of the work in the aircraft at issue,
19 and his discussions with the aircraft owner, as well as, again,
20 his discussions with Mr. Jacques. He was not available to testify
21 because of a personnel action which is apparently taken against
22 him. But the Administrator asserts that that action has nothing
23 to do with this case. Thus, there is no evidence or testimony or
24 report from the aviation inspector in this case I can weigh
25 against the statements by the Respondent, or the Respondent's

1 witnesses.

2 The documents which are addressed -- there are documents
3 that were addressed to Mr. Stromski in Exhibit A-2 and A-9, which
4 included a description of the events and the state of mind of
5 Mr. Jacques and the Respondent, that are in issue in this case,
6 which support the Respondent's assertion that he did not know or
7 intend to cause a false entry to be made as part of the
8 maintenance record in 9561F. Those documents clearly show that
9 there was an intent by Mr. Jacques, and Respondent understood that
10 Mr. Jacques would go to Indiana to review the aircraft. Those
11 documents and the evidence therein are unrebutted by the
12 Administrator.

13 The Administrator argues that, despite Mr. Jacques'
14 testimony that he had believed for the past 30 years he could sign
15 off on an annual inspection without viewing or physically
16 inspecting the aircraft, again, he admits that he has only done
17 that once, and that once was in this specific case. The
18 Administrator implies that his own witness' statements as to the
19 state of mind should not be believed. I found Mr. Jacques to be,
20 as I indicated, generally credible. He's been sanctioned for his
21 conduct by the Administrator and appears to have nothing to gain
22 or to lose by his testimony in this case. Certainly, the
23 Administrator did not attempt to clarify or impeach his testimony
24 in any way.

25 Of greater import is the fact that the Administrator

1 does not attempt to impute Mr. Jacques' alleged knowledge of
2 wrongdoing to the Respondent. Respondent was asked if he
3 performed a 100-hour inspection without physically inspecting the
4 aircraft, to which he answered he would not. However, the actual
5 work he, the Respondent, performed and documented is not in
6 question in this case. The false entry that was made was made by
7 Mr. Jacques.

8 The Administrator appears to argue that, since the
9 Respondent would not perform a 100-hour inspection without
10 physically inspecting the aircraft, he would have to know that
11 Mr. Jacques could not complete an annual inspection without
12 physically performing work on the aircraft. However, the
13 Administrator never asked the Respondent that question, relative
14 to what he knew, as to what type of inspection or what Mr. Jacques
15 was required to do and perform.

16 The Administrator argues that Part 43, Appendix D,
17 specifically provides checklists which must be used to perform a
18 100-hour and annual inspections. Those checklists require hands-
19 on performance by an A&P mechanic, as well as those A&Ps with
20 inspection authority. The Administrator also points out that the
21 practical test standards for the A&P examination include a
22 definition of inspection; however, the definition of inspection is
23 nowhere else in the Federal Aviation Regulations defined.
24 Unfortunately, Respondent was not asked about his knowledge of
25 Part 43, Appendix D, and how it applies to what Mr. Jacques had to

1 do. Or was he asked as to his knowledge of the definition of what
2 an inspection was by the Administrator. Both Mr. Jacques and the
3 Respondent testified that they believe the FAA should be clearer
4 as to what the FAA means, and what is required by the word
5 inspection.

6 Respondent testified on numerous times that he did not
7 intend to cause a fraudulent or intentionally false entry in this
8 case, or intended to make it a part of the maintenance record of
9 the aircraft at issue in this case. He testified it was not in
10 his mind to make or cause to be made a fraudulent or intentionally
11 false entry in the maintenance records. He did not sign off as
12 the inspection -- of the A&P with inspection authority, so it was
13 not his false statement.

14 He did not think it was a false statement when he placed
15 the sticker of this annual inspection certification in the
16 logbooks relative to this aircraft. He thought the inspection had
17 been completed. He performed the physical inspection.

18 Mr. Jacques performed the research and inspected the logbooks for
19 compliance with airworthiness directives. And he also worked with
20 Mr. Jacques in reviewing the airworthiness directives, and whether
21 or not this helicopter specifically complied with those
22 airworthiness directives.

23 Even though Mr. Jacques could not physically go to
24 Indiana to look at the aircraft, the Respondent testified that he
25 believed that all of the inspections that were required to be

1 performed were performed. He did not believe that he was causing
2 a false entry to be made in the maintenance records because he did
3 not believe the stick-on certificate signed by Mr. Jacques was
4 false. Again, all of the inspections that were required to be
5 done were done, and he believes so. He believed that fact.

6 This is indeed a difficult case for me. Certainly the
7 Administrator may prove his case through circumstantial evidence
8 and has tried to do so in this case. That has been the approach
9 in this case. In some cases, circumstantial evidence certainly is
10 enough to prove the three-pronged elements in *Hart vs. McLucas*.
11 In this case, there is no admission to an investigator or a
12 document which directly proves what was in Respondent's mind and
13 when he affixed the annual inspection entry into the maintenance
14 logbooks of 9561F.

15 In the final analysis, this case must be decided upon
16 the credibility of the Respondent. I have observed the Respondent
17 throughout the course of these proceedings. I have watched his
18 reactions to testimony from friendly witnesses, as well as adverse
19 witnesses to his position. I have witnessed his demeanor in the
20 courtroom. I have listened to character witnesses who praise his
21 honesty and his integrity and his work ethic, including those
22 praises from Mr. Jacques, who's already lost his certificate.

23 I asked Mr. Reynolds specific questions so that I could
24 gauge his credibility. He answered each of my questions directly.
25 He was not evasive or deceptive. He specifically faced me and

1 answered each question without diverting his eyes or turning away.
2 I found him to be credible. I believe him when he testified that
3 he did not knowingly cause to be made a fraudulent or
4 intentionally false entry in the maintenance record of 9561F.

5 Having found him credible, I must find, therefore, in
6 this close case, that the Administrator has not proven by a
7 preponderance of the evidence that the Respondent caused to be
8 made a fraudulent or intentionally false entry in the maintenance
9 records of 9561F, in violation of Section of 43.12(a)(1).

10 Having made these findings, now I will enter findings
11 and facts and conclusions of law into the record in this case.
12 Specifically reading from the Emergency Order of Revocation as to
13 paragraph 1, the Respondent has admitted paragraph 1. As to
14 paragraph 2, that evidence has substantiated the evidence in
15 paragraph 2 that, on or about March 16, 2011, you performed
16 maintenance on a Hughes 269B helicopter civil aircraft registered
17 9561F at Huntington, Indiana airport. This maintenance included,
18 among many items, a 100-hour/biennial inspection.

19 As to paragraph 3, there is evidence to prove that,
20 prior to March 16, 2011, you sought the assistance of Mr. Thomas
21 Adrian Jacques, who at all times relevant herein, held Aircraft
22 Mechanic Certificate Number 1467604 with airframe and powerplant
23 ratings and inspection authorization. I do not find, as I've
24 stated previously, that the Administrator has proven by a
25 preponderance of reliable, probative and credible evidence that

1 the Respondent and Mr. Jacques agreed to have Mr. Jacques make a
2 maintenance entry indicating an annual inspection had been
3 performed on 9561F, knowing that that you and Mr. Jacques had no
4 intention of having Mr. Jacques travel to the location of the
5 aircraft in Indiana to actually perform an annual inspection or
6 physically inspect 9561F.

7 As to paragraph 5, there is evidence in the record that
8 establishes that, on March 16, Mr. Jacques made an entry in the
9 maintenance records for civil aircraft 9561F, which read as
10 follows: "I certify that this aircraft has been inspected I/A/W
11 an annual inspection and was determined to be in an airworthy
12 condition on this date." And there's a blank line which indicates
13 and it includes his A&P number. There's proof that's been
14 established that shows that the entry was subsequently signed by
15 Thomas A. Jacques. What has not been proven is paragraph 7 by a
16 preponderance of probative, reliable and credible evidence that,
17 at the time the entry by Mr. Jacques was made, that Respondent and
18 Mr. Jacques agreed that he would make this maintenance entry
19 indicating an annual inspection had been performed on 9561F,
20 knowing that Mr. Jacques did not actually perform this annual
21 inspection.

22 Paragraph 8 has been established by a preponderance of
23 evidence that Mr. Jacques provided the Respondent with a signed
24 maintenance entry described in paragraph 5 and 6.

25 There is evidence to establish that paragraph 9, that

1 Respondent then inserted the above maintenance records in 9561F's
2 maintenance logbooks.

3 Paragraph 10 has been established. At no time relevant
4 hereto, did Mr. Jacques physically inspect 9561F.

5 And paragraph 11 has also been established, at no time
6 relevant did Mr. Jacques inspect 9561F in accordance with the
7 requirements on annual inspection.

8 Paragraph 12 has not been proven by the Administrator by
9 preponderance of probative, reliable and credible evidence that
10 the Respondent knew that Mr. Jacques did not perform the
11 inspection referred to in the maintenance record and described
12 above. I found the Respondent's testimony to be credible, that he
13 believed that all inspections that were required to be done for
14 the annual and the inspection he'd done had been done.

15 As to paragraph 13, there's been no proof. There's not
16 been a preponderance of evidence to prove that the Respondent --
17 that on March 16 that he intentionally caused a false entry to be
18 made in 9561F's aircraft maintenance record, to wit: the
19 maintenance entry described in paragraph 5 and 6 above.

20 Finally, as I've indicated, I do not find that, based on all of
21 the evidence before me and my determinations as to credibility,
22 that the Administrator has not proven that the Respondent has
23 violated Section 43.12(a)(1) of the regulations.

24 Therefore, having made those findings, I will issue the following
25 Order.

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ORDER

Based on my review of all of the evidence in this case, I find that the Administrator has not proven the alleged violation of Section 43.12(a)(1) of the Federal Aviation Regulations that he has brought against Randy Herbert Reynolds. The Administrator has not proven his case or his allegations by a preponderance of reliable, probative and credible evidence.

I do not find that the sanction imposed by the Administrator is appropriate and warranted in the public interest in air commerce and air safety. I, therefore, cannot affirm the Administrator's Emergency Order, the complaint in this case, or the Order of Suspension in this case.

This Order is entered on the 21st day of March 2012 in Philadelphia, Pennsylvania [sic].

ALFONSO J. MONTAÑO
Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE MONTAÑO: That completes -- completes my Oral and Initial Decision. The parties have appeal rights and those appeal rights are -- I have given the court reporter the appeal rights that are outlined, their specific time deadlines, which I'm sure the Administrator is aware of, and

1 counsel should be aware of as well, for the Respondent.

2 If the case is appealed, then it goes to the National
3 Transportation Safety Board. The actual Board members will review
4 the record in this case to determine if I have -- and can either
5 affirm my decision, reverse my decision, or remand my decision for
6 further proceedings they feel may be appropriate. Certainly, that
7 is the beauty of the American legal system, that the party --
8 either party, whether they win or lose, can appeal.

9 Certainly, I am not infallible, and certainly I cannot
10 claim that every case I decide is correct or in compliance with
11 the law. Certainly, based on the evidence before me, this is the
12 decision I feel I had to make and it turned on the credibility of
13 the Respondent, Mr. Reynolds.

14 Having said that, I will end my Oral and Initial
15 Decision. Are there any corrections that the parties wish to make
16 for the record? Let me ask the Administrator first.

17 MS. MARTINO: No, Your Honor, other than, I believe you
18 stated we're in Philadelphia, Pennsylvania.

19 ADMINISTRATIVE LAW JUDGE MONTANO: I'm sorry. That was
20 -- I was in Philadelphia Monday. I'm in North -- Charlotte, North
21 Carolina today. And I'll be in Washington this afternoon. Thank
22 you.

23 Anything from the Respondent?

24 MR. RIOLO: Yes, Your Honor. Can you tell us when the
25 Respondent will be able to exercise the privileges of his

1 certificate?

2 ADMINISTRATIVE LAW JUDGE MONTANO: I cannot do that. I
3 -- that -- my role in these proceedings is to determine whether or
4 not the Administrator has established the allegations that have
5 been brought against the -- against your client, the Respondent,
6 Mr. Reynolds. That has to be discussed with the FAA. I have made
7 my decision. If the decision is appealed, then certainly that
8 will affect whether or not he will be able to use his certificate.
9 But that is not something I can tell you or give you an answer to.
10 You have to discuss that with the Administrator. They have
11 possession of the certificate.

12 MR. RIOLO: Thank you, Your Honor.

13 ADMINISTRATIVE LAW JUDGE MONTANO: So you'll have to
14 discuss it with them. Anything else?

15 MR. RIOLO: No, Your Honor.

16 ADMINISTRATIVE LAW JUDGE MONTANO: All right. Thank you
17 all very much for your time and your patience and in providing the
18 time for me to decide this case. The parties were well-
19 represented, and they represented their clients very well.
20 And I appreciate their professionalism and the respect they've
21 shown to me.

22 Thank you. And I'll end the -- we'll go off the record.
23 Take care and have a safe trip back.

24 (Whereupon, at 12:00 p.m., the hearing in the above entitled
25 matter was adjourned.)

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Randy Herbert Reynolds

DOCKET NUMBER: SE-19191

PLACE: Charlotte, North Carolina

DATE: March 21, 2012

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

Bobbie G. Newman
Official Reporter