

SERVED: March 5, 2013

NTSB Order No. EA-5656

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 5th day of March, 2013

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19145
v.)	
)	
DAVID STEVEN WALKER,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued April 3, 2012.¹ By that decision, the law judge determined the Administrator proved respondent violated 14 C.F.R. § 120.33(b)² when respondent submitted a urine sample

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

² Section 120.33(b), entitled “Use of prohibited drugs,” states as follows:

that contained a cocaine metabolite (benzoylecgonine, hereinafter, “BZE”) indicating he had recently consumed cocaine. The Administrator also determined, and the law judge affirmed, respondent’s ineligibility to hold a medical certificate under 14 C.F.R. §§ 67.107(b)(2), 67.207(b)(2), and 67.307(b)(2).³ The Administrator’s emergency order, dated August 8, 2011, revoked respondent’s commercial pilot, first-class medical, and all other certificates respondent holds.⁴ We deny respondent’s appeal.

A. *Facts*

On June 28, 2011, respondent reported to work in Burbank, California for a flight scheduled at 6:00 am as a captain for cargo operation for Ameriflight, which conducts all-cargo operations under 49 C.F.R. part 135 from its base in Burbank. Prior to taking off in a Piper PA-31-350, respondent hit a taxiway light with the left propeller of the aircraft. Respondent was unaware his aircraft collided with the taxiway light, even though the collision caused enough damage to render the propeller incapable of being overhauled to ensure its airworthiness. Respondent was informed of the incident, and submitted to post-accident drug and alcohol tests pursuant to 14 C.F.R. §§ 120.109(c) and 120.217(b), respectively, at a nearby occupational health center, in accordance with Ameriflight’s drug and alcohol testing program.

(..continued)

(b) No certificate holder or operator may knowingly use any individual to perform, nor may any individual perform for a certificate holder or an operator, either directly or by contract, any function listed in subpart E of this part while that individual has a prohibited drug, as defined in this part, in his or her system.

³ These sections provide no one may hold a first-class, second-class, or third-class medical certificate if the individual has a verified positive drug test result on a Department of Transportation drug test within the prior two years.

⁴ Respondent has waived the applicability of the expedited procedures required in emergency cases.

Ruzanna Ovakimyan, a nurse at Burbank Occupational Health Center, administered respondent's drug and alcohol tests. Respondent tested negative for alcohol via a breathalyzer test, but his urine sample contained 4,423 nanograms per milliliter (ng/mL) of BZE. The cut-off for BZE under Department of Transportation (DOT) testing regulations is 100 ng/mL.⁵

B. Procedural Background

Following the Administrator's issuance of the emergency order, respondent filed a timely appeal, and the case proceeded through discovery and to hearing. At the hearing, the Administrator's attorney called Ms. Ovakimyan to testify.⁶ Ms. Ovakimyan stated she had administered numerous drug tests, and could not specifically recall administering respondent's test. Ms. Ovakimyan, therefore, testified concerning her understanding of the required DOT procedures applicable to administration of drug tests. Ms. Ovakimyan testified she always takes the specimen cup from the donor providing the urine sample and always splits it into two vials in the donor's presence, in accordance with DOT regulations.⁷

For each drug test she administers, Ms. Ovakimyan completes a chain of custody form (CCF), which is a form consisting of one top page with five carbon copy pages, in the presence of the donor. Ms. Ovakimyan acknowledged two carbon copies of the CCF she completed for respondent's drug test appear different: one copy of the form has a handwritten "X" indicating the temperature of respondent's urine at the time of the test was between 90 and 100 degrees

⁵ 14 C.F.R. § 120.7(m); 49 C.F.R. §§ 40.85, 40.87(c); Tr. 145.

⁶ The law judge allowed Ms. Ovakimyan's testimony over respondent's objection, which he stated in a motion in limine. Respondent objected that such testimony should be excluded on the basis of Federal Rule of Evidence 602, which requires fact witnesses to have first-hand knowledge of the events about which they will testify. The law judge indicated this objection would go to the weight, rather than the admissibility, of the testimony, because the Federal Rules of Evidence were not applicable at the time of the hearing.

⁷ Tr. 38.

Fahrenheit. On another carbon copy of the CCF, however, the handwritten “X” verifying the temperature appears smaller. When asked about this discrepancy, Ms. Ovakimyan speculated she could have marked the “X” on one of the carbon copies if she noticed it missing, to ensure all copies were consistent.⁸ Ms. Ovakimyan stated, however, that she would never open the bag containing both tubes of urine once the bag was sealed with the correct copy of the CCF inside,⁹ and that she had never, to her knowledge, failed to mark the temperature of the specimen on the CCF.¹⁰

The Administrator’s attorney also called Ted Johnson, director of operations at Quest Diagnostics, and Dr. Janelle Jaworski, a certified medical review officer (MRO) who is the forensic pathologist who reviewed respondent’s test results after respondent requested the split sample be tested. Quest Diagnostics completed the test of the split sample, and Dr. Jaworski reviewed the results, which confirmed the presence of BZE above the permissible limit. Both Mr. Johnson and Dr. Jaworski testified a failure to mark an “X” on the CCF to verify the temperature of the urine was between 90 and 100 degrees Fahrenheit was not a fatal flaw requiring the test results be disregarded.¹¹ Mr. Johnson also stated the seals on the vials of urine were intact, indicating the test results were accurate.

Dr. Jaworski recalled contacting respondent after receiving the split sample test result and asking him if he had an explanation for the presence of a cocaine metabolite in his urine. Respondent told her he had been at a bar on Saturday, June 25, 2011, three days prior to his

⁸ Tr. 67.

⁹ Tr. 49.

¹⁰ Tr. 77-80.

¹¹ Tr. 124-25, 178.

aircraft collision and administration of his drug and alcohol test, and someone put Rohypnol in his drink.¹² Other than opening the Rohypnol resulted in the presence of a cocaine metabolite in his urine, respondent did not offer any other explanation to Dr. Jaworski.

In his case-in-chief, respondent presented the testimony of his friend, Jamie Rogers, and himself. Mr. Rogers recalled going to a bar in West Hollywood with respondent the evening of June 25, 2011, and testified he and respondent left their drinks unattended a few times throughout the evening. Mr. Rogers noticed respondent behaved differently after consuming his second drink, which consisted of gin and tonic. Respondent's testimony corroborated Mr. Rogers's testimony concerning the events of June 25, 2011. Respondent claimed to have no recollection of anything following his consumption of the second drink until the following morning. Respondent testified he felt fine on Monday, June 27, 2011, and flew the Piper PA-31-350 round-trip from Burbank to Las Vegas on behalf of Ameriflight, beginning at 6:00 am. On Tuesday, June 28, 2011, respondent again operated the Piper, at which time he collided with the taxiway light, as described above.

Regarding his submission of the drug test at issue, respondent stated Ms. Ovakimyan split the urine sample in another room and then returned holding two vials of urine.¹³ Respondent acknowledged he signed the CCF, but did not believe the temperature was marked on the form.

The portion of the CCF above respondent's signature states as follows:

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-

¹² Rohypnol is a brand name for the drug flunitrazepam, a Schedule IV drug under the Controlled Substances Act, which is "a strong central nervous system depressant which causes extreme sleepiness and amnesia. It is water-soluble, tasteless, and odorless." United States v. Wadford, 331 Fed.Appx. 198, 200 n.1 (4th Cir. 2009). In contrast, cocaine is a Schedule II drug.

¹³ Tr. 342.

evident seal in my presence and that the information provided on this form and the label affixed to each specimen bottle is correct.¹⁴

As part of his defense, respondent underwent a polygraph examination, which he passed.

Respondent attempted to obtain a video surveillance recording from the bar at which he contends would show someone put a Rophynol tablet in his drink, but testified the bar would not provide the recording to him. Respondent stated it is not uncommon for people to tamper with drinks in certain bars in West Hollywood. Tr. 361.

Respondent concluded his case by calling Dr. Mark Upfal, an MRO at Detroit Medical Center, to testify. Dr. Upfal stated he oversees hundreds of drug tests each year, and the inconsistent temperature mark should have prompted Dr. Jaworski to call Ms. Ovakimyan and ask Ms. Ovakimyan to provide an explanatory memorandum. Dr. Upfal opined the inconsistent temperature mark was a “correctable flaw,” but it “needed to be corrected at the time of MRO review.”¹⁵ Dr. Upfal based this opinion on his interpretation of 49 C.F.R. § 40.203.¹⁶ Dr. Upfal

¹⁴ Exh. A-5.

¹⁵ Tr. 382.

¹⁶ Section 40.203 states as follows:

§ 40.203 What problems cause a drug test to be cancelled unless they are corrected?

- (a) As the MRO, when a laboratory discovers a “correctable flaw” during its processing of incoming specimens (see § 40.83), the laboratory will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to you that the specimen has been “Rejected for Testing” (with the reason stated).
- (b) The following is a “correctable flaw” that laboratories must attempt to correct: The collector's signature is omitted on the certification statement on the CCF.
- (c) As the MRO, when you discover a “correctable flaw” during your review of the CCF, you must cancel the test unless the flaw is corrected.
- (d) The following are correctable flaws that you must attempt to correct:
 - (1) The employee’s signature is omitted from the certification statement, unless the employee’s failure or refusal to sign is noted on the “Remarks” line of the CCF.

stated respondent's test should have been cancelled because the inconsistent temperature marking was not corrected.

C. Law Judge's Oral Initial Decision

In his oral initial decision, the law judge determined the Administrator proved respondent was ineligible to hold a medical certificate and had violated 14 C.F.R. § 120.33(b). The law judge provided a detailed summary of the testimony and exhibits the parties offered at the hearing. The law judge specifically determined the inconsistent temperature marking on the CCF did not impugn Ms. Ovakimyan's credibility; in addition, the law judge stated the temperature problem on the CCF did not impact the chain of custody. The law judge also determined respondent's testimony lacked credibility.¹⁷ Specifically, in regard to this lack of credibility, the law judge stated if respondent awoke on Sunday morning and thought he had been drugged the previous evening, he should not have arrived at 4:00 am on Monday morning to operate the aircraft without first determining the problem. Overall, the law judge determined respondent did not prove his affirmative defense that someone involuntarily administered a drug to him, and that the evidence established respondent had a verified positive drug test result on June 28, 2011.

D. Issues on Appeal

Respondent appeals the law judge's decision, on several bases. Respondent contends the test should have been cancelled under the DOT regulations, and asserts Ms. Ovakimyan did not

(..continued)

(2) The certifying scientist's signature is omitted on Copy 1 of the CCF for a positive, adulterated, substituted, or invalid test result.

(3) The collector uses a non-Federal form or an expired CCF for the test...

¹⁷ Initial Decision at 445-46.

fully understand the DOT drug testing requirements. Respondent also argues he did not receive a full and fair hearing because the law judge curtailed his cross-examination of Ms. Ovakimyan and Dr. Jaworski on the issue of making the carbon copies of the CCF identical. In addition, respondent asserts the law judge did not give proper weight to Dr. Upfal's testimony, which indicated "tampering" with a CCF called into doubt the validity of the chain of custody. Respondent urges us to reverse the law judge's credibility findings concerning the testimony of both Ms. Ovakimyan and himself, by finding these determinations were arbitrary and capricious. Finally, respondent also argues the law judge did not adequately consider respondent's testimony that he did not knowingly ingest cocaine.¹⁸

2. Decision

A. Administration of Drug Test

We affirm the law judge's determination that the inconsistent temperature marking did not invalidate the drug test. In addition, we reject respondent's contention that Ms. Ovakimyan erred in her administration of the drug test.

1. Chain of Custody Form

Respondent contends the inconsistent temperature marking on the CCF should serve to invalidate his positive drug test. Based on the plain language of 49 C.F.R. § 40.203, we disagree. A reading of section 40.203 indicates errors not specifically listed as "fatal" or "correctable" do not result in cancellation of the test.

Board precedent supports this interpretation of chain of custody errors. In Administrator v. Flores,¹⁹ the respondent argued the person who administered the drug test violated the chain of

¹⁸ Appeal Br. at 8.

¹⁹ NTSB Order No. EA-5279 (2007).

custody requirements by leaving the testing site and not keeping the CCF and specimens in a secure area. The person administering the test, however, testified she merely walked across the hall to an office with the specimens and CCF, where the respondent signed the CCF. The law judge determined the person administering the test was more credible than respondent. In Flores, the Board stated a slight error in the testing procedure would not invalidate a test result: “[w]hile the DOT regulations regarding drug-testing procedures set forth extremely specific requirements that are designed to ensure the accuracy of drug test results, we have previously recognized that a *de minimus* procedural violation may not automatically render a drug test result invalid.”²⁰ Similarly, in Commandant v. Catton,²¹ the Board indicated, to invalidate the appellant’s drug test results, the appellant should have produced “evidence of an attempt to open the package containing the sample or defeat its tamper-proof seals.”²² Based on this absence of proof and the testing facility’s literal compliance with the regulations, the Board found the testing facility’s failure to produce names of everyone who handled the specimen at both testing facilities that performed the tests did not warrant cancellation of the test or invalidation of the results.

In the case at hand, the law judge assessed the evidence concerning the inconsistent temperature marks and determined the inconsistencies were not errors that were “fatal” to the test. The law judge stated the “lab copy,” which is the top page of the CCF, was “consistent all the way through.”²³ The law judge also correctly noted respondent did not assert a “medical” or

²⁰ Id. at 7 (citing Commandant v. Raymond, NTSB Order No. EM-175 (1994)).

²¹ NTSB Order No. EM-185 (1999).

²² Id. at 4 n.6.

²³ Initial Decision at 445.

“scientific” problem existed with the test to render it invalid.²⁴ In addition, the law judge mentioned the statement on the CCF beneath which respondent signed his name, which verifies, “each specimen bottle used was sealed with a tamper-evident seal in my presence,” and “the information provided on this form ... is correct.”²⁵ The law judge found not credible respondent’s testimony that he signed the statement before reading or comprehending it.²⁶

We agree with the law judge’s determinations on each of these foregoing issues. Respondent has not presented evidence on appeal, case law, or indications from regulatory or legislative history to establish his assertion that the inconsistent temperature marking required cancellation of the test. Respondent further argues, on appeal, that the law judge did not properly consider the testimony of Dr. Upfal, who opined at the hearing that the test should have been cancelled because the copies of the CCF were not identical. The Administrator, in response to respondent’s argument concerning Dr. Upfal’s opinion, cites to 49 C.F.R. § 40.5, which states as follows:

ODAPC [The DOT Office of Drug and Alcohol Policy and Compliance] and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of this part. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters. Only Part 40 interpretations issued after August 1, 2001, are considered valid.

Respondent has not provided any written interpretations from ODAPC or the DOT Office of General Counsel in support of his argument that, when temperature markings on the various carbon copies of the CCF are not identical, the drug test must be cancelled. We interpret

²⁴ Id.

²⁵ Id.; Exh. A-5.

²⁶ Id. at 445-46

49 C.F.R. § 40.5 as a prohibition on rulemaking via adjudication on this issue. Therefore, we do not believe the law judge erred in refraining from considering Dr. Upfal's opinion as authoritative on this issue. Moreover, respondent does not dispute he signed the CCF, indicating the information on the CCF was correct.

We also agree the law judge was correct to assess credibility concerning the chain of custody. Although Ms. Ovakimyan acknowledged on cross-examination that she did not specifically remember administering respondent's drug test, because she administers so many tests on a regular basis, the law judge was correct in allowing her testimony and considering this lack of specific recollection as relevant to the weight of the testimony, rather than for its admissibility. Following this determination, in assessing the weight of the testimony, the law judge compared Ms. Ovakimyan's testimony with respondent's testimony, and found respondent's testimony not credible. As discussed in greater detail below, we do not believe respondent has established the law judge's credibility determinations were arbitrary and capricious. Based on the law judge's credibility findings and our precedent concerning chain of custody arguments, we affirm the law judge's conclusion that the inconsistent temperature markings on the various copies of the CCF did not impugn the chain of custody of the urine specimen or otherwise function to invalidate the test result.

2. Conduct of Ms. Ovakimyan

Respondent also argues Ms. Ovakimyan did not understand the testing requirements and made other errors during the test. For example, on appeal, respondent asserts Ms. Ovakimyan does not fully understand English or mathematical measurements, and is not aware of the testing requirements. At the hearing, respondent also testified Ms. Ovakimyan did not split his urine sample in his presence.

We defer to the credibility findings of our law judges in the absence of a showing such findings are arbitrary and capricious.²⁷ In the case *sub judice*, the law judge found Ms. Ovakimyan's testimony more credible than respondent's testimony, and we concur with this assessment. Contrary to respondent's argument on appeal, the law judge commented on the credibility of Ms. Ovakimyan's testimony concerning her standard procedures for conducting urine tests.²⁸ Ms. Ovakimyan's testimony concerning her standard procedure in administering a urine test was extremely specific.²⁹ Ms. Ovakimyan testified she has been administering drug tests since 2001 and consistently administered them in the same manner each time. Although Ms. Ovakimyan could not specifically recall respondent's drug test, she testified she would never reopen a bag with a sample, and she would complete an affidavit under the DOT regulations if she needed to alter the form. Ms. Ovakimyan opined she or someone else could have filled in the "X" verifying the temperature of the specimen on different copies of the form once the copies were separated to ensure the copies were duplicative. We find Ms. Ovakimyan had no motivation to provide incorrect testimony at the hearing.

Respondent stated Ms. Ovakimyan split the sample in another room and then came back into the room in which he waited.³⁰ Respondent testified Ms. Ovakimyan was in another room splitting the sample, but testified she was only gone for 30 to 45 seconds.³¹ Respondent stated he then signed the CCF, which did not have any mark concerning the temperature of the urine, as

²⁷ 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).

²⁸ Initial Decision at 444.

²⁹ Tr. 34-39.

³⁰ Tr. 341-42.

³¹ Id.

well as the labels that would function as seals on the vials containing the urine. Respondent testified Ms. Ovakimyan did not affix the seals to either of the vials containing his urine in his presence.

The law judge resolved these contradictions in testimony by determining the testimony Ms. Ovakimyan provided was more credible than respondent's testimony. We defer to this credibility determination, as it is not arbitrary and capricious, but is based on consideration of the evidence (in particular, the self-serving testimony of the respondent at the hearing) and the law judge's determination that other aspects of respondent's testimony were not credible.³²

B. Respondent's Affirmative Defense

We also do not find persuasive respondent's affirmative defense that a person slipped a drug into his drink at a bar the weekend before the flight at issue. First, respondent speculated the drug in his drink was Rohypnol, but did not present any testimony concerning whether Rohypnol could result in the presence of a large amount of BZE in his urine. Second, respondent did not attempt to contact Ameriflight or medical personnel following his night at the bar, even though on Sunday morning he believed he had been drugged. In addition, respondent's testimony and his friend, Mr. Rogers's testimony, were inconsistent on several points.

Mr. Rogers testified the bar they visited was "very small" and they were in close proximity to their drinks "the entire time."³³ However, Mr. Rogers stated he "found" respondent later during their visit at the bar, and did not explain how the two were separated. Neither respondent nor Mr. Rogers stated the bar was crowded when they attended it. Mr. Rogers opined "there was a

³² Initial Decision at 445-46. In addition, the law judge acknowledged respondent underwent a polygraph examination, but stated "there's any number of questions that weren't asked on the polygraph." *Id.* at 447.

³³ Tr. 265, 267.

time when both sets of eyes were not on the drinks.”³⁴ Both respondent and Mr. Rogers suggested the drink may have been tainted when they were in the restroom, but they testified they did not go to the restroom at the same time. Respondent testified he left his drink unattended when he smoked a cigarette outside the bar; however, he did not indicate Mr. Rogers was away from his drink when he went outside. Furthermore, Mr. Rogers stated the two were in close proximity to their drinks throughout the night.³⁵ In addition, while he testified the bar was in “the shady underbelly of West Hollywood,” respondent did not attempt to explain why he chose to leave his drink unattended at such a venue.³⁶ Finally, Mr. Rogers described respondent as dancing and acting out of character when respondent was consuming his second drink. However, on cross-examination, Mr. Rogers acknowledged he had only known respondent for approximately two weeks before their visit to the bar on June 25, 2011.³⁷ Therefore, we do not find probative Mr. Rogers’s testimony concerning what conduct may have been out of character.

Based upon these inconsistencies, we find the law judge’s determination that respondent’s testimony lacked credibility was not arbitrary and capricious. To the extent respondent argues the law judge failed to consider his testimony on this affirmative defense, we disagree. The law judge discussed respondent’s affirmative defense in his initial decision, and resolved the defense on the basis of a credibility finding adverse to respondent. We defer to this

³⁴ Tr. 271.

³⁵ Tr. 265.

³⁶ Tr. 358.

³⁷ Tr. 262-63.

determination, and, as an ancillary matter, note we have rejected such affirmative defenses in previous cases.³⁸

C. Evidentiary Arguments

Finally, respondent alleges the law judge erred in overseeing the testimony at the hearing. In particular, respondent contends the law judge abused his discretion in curtailing the cross-examination of Dr. Jaworski concerning the effect of the inconsistent temperature markings, and the absence of some of the markings, on certain copies of the CCF.

Our law judges have significant discretion in overseeing testimony and evidence at hearings, and we typically review our law judges' evidentiary rulings under an abuse of discretion standard, after a party can show such a ruling prejudiced him or her.³⁹ In the case at issue here, respondent cannot show the law judge's conduct in overseeing the cross-examination of Dr. Jaworski prejudiced him. Dr. Jaworski testified at length concerning the inconsistent temperature markings on the CCF, and opined the markings did not require cancellation of the urine test.⁴⁰ The law judge allowed respondent's attorney to ask a multitude of questions on cross-examination concerning every aspect of Dr. Jaworski's review of respondent's test

³⁸ See, e.g., Administrator v. Zumarraga, NTSB Order No. EA-5618 at 7 (2012) (deferring to law judge's credibility determination unfavorable to the respondent, who alleged BZE was present in his urine because he consumed coca tea shortly before operating an aircraft); Administrator v. Kalberg, NTSB Order No. EA-5240 at 5 (2006) (rejecting the respondent's affirmative defense that he inadvertently ingested marijuana by virtue of smoking several "house" cigars he had recently purchased while on a family vacation in Aruba).

³⁹ See, e.g., Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Bennett, NTSB Order No. EA-5258 (2006)). We will not overturn a law judge's evidentiary ruling unless we determine that the ruling was an abuse of discretion. See, e.g., Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001).

⁴⁰ Tr. 178.

results.⁴¹ We have carefully reviewed the transcript of the hearing, and do not believe the law judge's halting of the cross-examination of Dr. Jaworski was an abuse of discretion.

In addition, as discussed above, 49 C.F.R. § 40.5 provides only the DOT ODAPC or OGC may provide interpretations of the regulations within 49 C.F.R. part 40. Therefore, to the extent respondent contends Dr. Jaworski's testimony on cross-examination would have confirmed respondent's theory that the inconsistencies on the copies of the CCF required cancellation of the drug test, such testimony would not have been binding and therefore, could not have prejudiced respondent. Overall, respondent cannot show the law judge's ruling concerning the cross-examination of Dr. Jaworski was an abuse of discretion.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent'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.

⁴¹ Tr. 194-234.

WJH
3/27

ORIGINAL

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. *

DAVID STEVEN WALKER, *

Respondent. *

* * * * *

Docket No.: SE-19145
JUDGE MULLINS

Kluczynski Federal Building
230 South Dearborn Street
Courtroom 3908
Chicago, Illinois 60604

Tuesday,
April 3, 2012

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

BEFORE: WILLIAM R. MULLINS
Administrative Law Judge

RECEIVED
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1 ORAL INITIAL DECISION AND ORDER

2 ADMINISTRATIVE LAW JUDGE MULLINS: This has been a
3 proceeding before the National Transportation Safety Board. It
4 was a bifurcated proceeding in the first portion of it and I won't
5 say that the Administrator's case in chief was presented in Los
6 Angeles, but the majority of the Administrator's case in chief was
7 presented in Los Angeles on February 22nd of this year. And also,
8 at that venue, one witness was presented by Respondent. Then we
9 reconvened here today in Chicago -- today is the 3rd day of April
10 of 2012, and the Administrator concluded his case in chief and the
11 Respondent has presented then the rest of his case in chief. And
12 it's ready for a decision at this time.

13 The Administrator was present throughout these
14 proceedings and represented by Mr. Adam Runkel, Esquire, of the
15 Western Pacific Region of Los Angeles. The Respondent was present
16 at all times in person and was represented by Mr. Charles Barnett,
17 Esquire, and Mr. Philip Prossnitz, Esquire, of the Chicago area.

18 As I go through my decision, there may be some aspects
19 of evidence that I don't address, but I want the record to reflect
20 that I have considered all of the evidence in this case. Some of
21 the evidence that has been presented I won't dwell on or I won't
22 even make reference to because I don't believe it's relevant for
23 my decision today. And any proposed findings of fact or
24 conclusions of the law that are inconsistent with this decision
25 are denied.

1 The matter was initiated by an Emergency Order of
2 Revocation that seeks to revoke Mr. David Steven Walker's -- has
3 revoked Mr. David Steven Walker's airman medical certificate and
4 his commercial pilot certificate, all of his pilot certificates
5 based on a failed drug test that was administered in the Los
6 Angeles area on June 28th of 2012. That order of revocation
7 serves as the complaint in these proceedings. The Respondent,
8 through counsel, did waive the emergency time provisions and
9 that's the reason we have proceeded as we have.

10 The complaint was filed on behalf of the Administrator
11 of the Federal Aviation Administration through the Regional
12 Counsel of the Western Pacific Region. At one point, it was
13 transferred to the Great Lakes Region for trial here in Chicago,
14 and then after motions presented by both sides, the matter was
15 then transferred when it was assigned to the Great Lakes Region.
16 Judge Geraghty originally had this case; he transferred it on to
17 me. And then based on motions, I bifurcated the proceeding and
18 that's the reason they proceeded the way they did.

19 But the matter has been argued before me, William R.
20 Mullins. I am an Administrative Law Judge for the Safety Board,
21 and as provided by the Board's Rules I will present my decision at
22 this time. As I said, the matter came on notice pursuant to the
23 parties, and the parties were afforded a full opportunity to offer
24 evidence, to call, examine and cross-examine witnesses. In
25 addition, the parties were afforded an opportunity to make

1 arguments in support of their respective positions.

2 DISCUSSION

3 I will go through in a moment and discuss the witnesses
4 and I'll try to identify -- there's a great number of exhibits and
5 I'll try to identify those exhibits. But the exhibits are part of
6 the transcript; there was a transcript provided of the proceeding
7 in Los Angeles with the exhibits that were admitted there, and
8 then there will be a transcript made of this proceeding today and
9 these exhibits, and then today's transcript and exhibits will be
10 provided to the parties should there be an appeal on my decision
11 today.

12 But basically, this matter sort of had two prongs. One
13 was the validity of the drug test administered by the DOT testing
14 facility. And then the second prong was the affirmative defense
15 of Respondent that somehow he was involuntarily administered a
16 drug without his knowledge, which, as I said, is an affirmative
17 defense on the part of the Respondent. And I will refer to each
18 of those as I talk about the witnesses and then I will conclude by
19 sharing what I think are conclusive. But I will say this at the
20 outset, that based on the evidence presented here today, I am
21 finding that the Emergency Order of Revocation should be
22 sustained.

23 The first witness called by the Administrator was
24 Ruzanna Ovakimyan who works at the Burbank Occupational Health
25 Center, and she testified that Respondent came to her -- well, let

1 me just generally give the background. On June 28th, Respondent
2 was operating an aircraft apparently at the Burbank Airport and at
3 that time for Ameriflight which was -- the testimony was it's the
4 largest 135 carrier in the United States. But in any event, he
5 was operating a Navajo aircraft and at that time he ran over a
6 taxi light while he was taxiing out for takeoff to Las Vegas. He
7 wasn't aware that he had run over a taxi light; he wasn't aware of
8 any problem.

9 He was called by their dispatcher and someone at the
10 office of Ameriflight heard him hit the taxi light. They had
11 called, asked him to come back. At that time, pursuant to
12 Ameriflight's op rules, he was suspended and was, pending
13 investigation of this incident, asked to do a drug test, which is
14 part of their policy anytime there is an incident like this. And
15 Mr. Walker agreed to do the drug test and he was taken then. The
16 incident occurred sometime around 6:00 a.m. in the morning, and
17 approximately 8:30 to 9:00 a.m. that morning he was taken by
18 Ameriflight over to this health center where the drug test was
19 administered.

20 Ms. Ovakimyan was sworn and she was the collector at
21 this drug site. She had identified Exhibit A-4, which was her
22 certificate of training; A-5, which was the custody and control
23 form. And she testified about the five copies: the first copy,
24 the top copy goes to the laboratory, the second copy goes to the
25 medical review officer, the third copy stays with the collector,

1 the fourth copy goes to the employer, and the fifth copy goes to
2 the donor, and these are all in a stack, if you will, with carbon
3 so that the donor copy would be the bottom one but should reflect
4 all of the information that's on the lab report.

5 She identified and there was admitted A-6, which was the
6 form with the lab results. She was quizzed about the fact that
7 the lab copy on the temperature was marked that the specimen was
8 within the 90- to 100-degree range, which requires a mark on that
9 form, but that the MRO's copy did not have that marked. The
10 collector's copy was marked, although apparently a different mark,
11 but it was marked and not blank. And then the employer and the
12 donor copy did not have a mark. And it's been the Respondent's
13 position all the way through that this was a fatal flaw, and I'll
14 talk about that in just a little bit. But in any event, those
15 were the forms.

16 Then on cross-examination, she identified R-14 and that
17 was the blank CCF form. She also identified and there was
18 admitted R-9, R-1 and R-15, which were also copies of this form
19 with some attachments, MRO notes. I think 9, 1 and 15 all were
20 the MRO's copy of the form.

21 The second witness was Mr. Lotter, who is the vice
22 president of flight operations and director of flight ops for
23 Ameriflight. He talked about their procedure just basically and
24 there has not been any issue about what happened out there that
25 morning and I'm not even going to talk about it. I will say that

1 he identified A-1, which is a letter of memorandum generated by
2 Ameriflight talking about this incident; A-2 was Ameriflight's
3 substance abuse policy; and A-3 was the sign-in sheet where
4 Mr. Walker had taken this drug class that they offer for all their
5 new hires, and he had only been working there a few months.

6 Witness 3 was Mr. Johnson and he is the co-responsible
7 person at Quest Diagnostics that did the initial testing; it was
8 tested positive. He identified and there was admitted A-7, which
9 is a list of the Health and Human Services qualified test
10 facilities. And Quest was not only on that list but also the
11 Clinical Reference Lab which did the split test. A-8 was the test
12 procedures and results, and he identified that as their litigation
13 package, but anyway that was admitted into evidence. On cross-
14 examination, I believe he -- well, maybe on redirect, but he also
15 identified A-8(a), which is the Quest Lab's custody and control
16 form, and A-9, which is the request for the split test.

17 The fourth witness was Dr. Jaworski, Janelle Jaworski.
18 She's a medical doctor and the medical review officer. She stated
19 that she gets both the lab copy of the custody and control form
20 and her copy or the second copy, which is the medical review
21 officer form. And she said it wasn't a fatal flaw and it was okay
22 if only the temperature was noted on the lab copy, which it was in
23 this particular situation. A-11 was her certificate as an MRO, A-
24 11(a) was her positive findings on the custody and control form,
25 A-11(a)(2), which was admitted today, was the custody and control

1 form with the split test results. That was admitted today but it
2 was introduced back in Los Angeles. A-12 were MRO notes and
3 A-12(a) were also MRO findings; 12(b) was the report of
4 verification of the drug test. And again, these all relate to the
5 positive test.

6 I thought it was interesting, counsel for Respondent
7 spent quite a bit of time talking about the fact that Dr. Nahin's
8 name was on the report and not Dr. Jaworski's, and I thought her
9 explanation was reasonable. But more interesting, I did note when
10 Dr. Upfal was called today, that there weren't any questions asked
11 of him about the fact that some of these forms have different
12 doctor's names than the one who actually did the test or made the
13 reports.

14 On cross-examination, there were -- or on redirect,
15 again there was, A-9 was the doctor's request for that split form
16 and that was -- I've already talked about that. A-13 was the
17 sanction guidance table. A-12 were notes, MRO notes. R-2 related
18 to the drug test, MRO drug test. R-3, R-4 and R-6 were all notes
19 generated by the medical review officer, and those were all
20 admitted.

21 Witness 5 was David Kuntz, who is the Clinical Reference
22 Lab responsible person, as was Mr. Johnson for Quest. And he
23 admitted their lab data package, which was A-9, and I don't know
24 why I have that. Obviously I have that wrong because I've
25 indicated earlier that A-9 was something else, so the record will

1 reflect which one was his lab data. But A-10 was the photo of the
2 testing bottle as they received it, which shows that it had the
3 appropriate reference numbers and also had the Respondent's
4 initial and/or signature.

5 At that time, the Administrator rested and the
6 Respondent presented their motion for summary judgment or judgment
7 at that time. And it went to the fact that there were two, only
8 two of the five copies had the temperature of the specimen marked
9 on it. And I overruled the motion at that time and I did share
10 with both the Administrator's counsel and Respondent's counsels
11 that I'm not unaware of the fact that the regulation, the DOT
12 regulation says it must -- several places in there where it said
13 it must be done a certain way, but our Board decisions have
14 related to the fact that in several instances, and they've been
15 cited here, that sometimes that must is -- that requirement is de
16 minimis if certain other things are done. And I so found in this
17 case. Like I said, I'm a believer or I used to be a believer that
18 must means must, and if you don't do it then it's wrong. But the
19 Board has said, well, it might be wrong, but if it's not that
20 important it's de minimis. So, the motion for summary judgment
21 was overruled.

22 The Respondent's evidence was -- first witness was Jamie
23 Rogers who testified out in Los Angeles, and Mr. Rogers testified
24 that he had known the Respondent for about 2 weeks. On the 25th
25 of June, which was a Saturday night, he went to a place called the

1 Fubar around 10:30 that night with Respondent and they had the
2 first drinks, he said, that they'd had that evening, and that the
3 Respondent had two drinks, both gin and tonics. And he said after
4 his second drink, he started to act unusual; he was acting out.
5 They ended up, he took him home in a cab. They had walked over
6 there from Respondent's apartment but he had taken him home in a
7 cab because of his condition. And when they got home,
8 Respondent's roommate was there and they took him, Respondent, put
9 him to bed, and Mr. Rogers said he stayed there for about an hour
10 after he had gone to bed and then he went home.

11 There was a suggestion by Mr. Rogers that this Fubar is
12 the kind of place that he has since heard that you can get your
13 drink spiked or somebody would put something illicit in your
14 drinks, but he did not see that happen to Respondent's drinks
15 although he on a couple of occasions had gone to the restroom as
16 did the Respondent. And then on other occasions, they were out on
17 this dance floor visiting and/or dancing, but they did not see
18 anyone put anything in Respondent's drink

19 The second witness for Respondent was the Respondent,
20 and he testified basically about the same situation. He did talk
21 about going to this Fubar. He said he started feeling unusual,
22 abnormal, I believe was his comment, after the second drink. And
23 he doesn't really have any memory after that until 11:00 the next
24 morning, and he said he woke up and he believed when he woke up
25 that he had been drugged. He testified that he went to work then

1 at 4:00 a.m. on Monday morning. This was Sunday morning that he
2 felt drugged. On Monday morning he went to work and flew to Las
3 Vegas and came back that night and he said he felt fine.

4 He went out then on Tuesday morning, the 28th, and said
5 he felt fine, got in his airplane, was taxiing out, when he was
6 called. He was not advised why, but he was called and told to
7 return back to their base of operation. And he did and when he
8 got back he was told he had run over this taxi light, was asked to
9 take the drug test, and they proceeded then over to the drug
10 testing lab. He testified on cross-examination that it was his
11 signature in Section 5 but that he had not read that. And having
12 read it now, he didn't believe that the things that were certified
13 in there by him had occurred.

14 The third witness called by Respondent was Dr. Upfal,
15 and Dr. Upfal was admitted as an expert in the area of medical
16 review officer technology. In fact, I thought it was interesting
17 that apparently he has been on this board for a number of years
18 and his job on the board is to write the medical review officer
19 certification exam for the medical review folks. So, I was
20 sitting here thinking, well, Dr. Jaworski just recently took the
21 exam, maybe she took the same exam that Dr. Upfal wrote, but she
22 passed it apparently because she was here and is certified as an
23 MRO. But anyway, Dr. Upfal believed after review of all of the
24 documents here and reading the transcript of that first hearing
25 that there was a fatal flaw and the test should have been

1 canceled. And on several occasions, he was asked if that was his
2 opinion based on a medical and scientific certainty and he said it
3 was. And I thought that was interesting because the standard in
4 my determination is a legal certainty and doesn't have anything to
5 do necessarily with the medical and scientific certainty.

6 Dr. Upfal's opinion, but he did say that it wasn't
7 unusual -- and there was a motion in limine as to Ms. Ovakimyan's
8 testimony that she not be allowed to testify because she couldn't
9 remember what happened on the test, but she testified about her
10 procedure and when asked about the temperature to be on all of the
11 reports, she said, well, it probably happened this way. Then on
12 cross-examination, and I'm not sure that I covered this in her,
13 she was asked and it was argued here this afternoon that she had
14 been doing these tests since 2001 and this was the first one that
15 she'd ever had where that temperature issue came up. And I
16 thought it was interesting because the last drug test case I had
17 was in Los Angeles or started in Los Angeles, and the second half
18 of it was in the Dallas area. But the lady testified there that
19 she had been doing these drug tests for several years and this was
20 the first one that ever failed.

21 So, it probably was in Ms. Ovakimyan's case that she'd
22 had this temperature problem on a number of them but this was the
23 first one that had ever come back as a failure. And I'm sure that
24 if that had been a circumstance that occurred many times
25 previously, it wouldn't have received any note if the drug test

1 wasn't positive. So, even though that was raised as somehow
2 questioning her credibility, I didn't think under the circumstance
3 in this case that that was particularly raised. And Dr. Upfal
4 testified that he couldn't remember things that he did 9 months
5 ago. I certainly can't remember things that I had done 9 months
6 ago, but I can tell you what my procedure would be, and I was
7 thinking about just as an example how I drive from my house to my
8 office every day and I do it the same way every day. And if that
9 policy and procedure is in place, I think that Ms. Ovakimyan's
10 testimony having particularly been the question here, she talked
11 about their policy and procedure, and as I said, she said this is
12 the first temperature problem she had had since 2001, but very
13 probably it's the only one she's ever had that this happened that
14 there was a positive indication. That sort of is my comment about
15 her credibility.

16 I'll move on to Dr. Jaworski. Let me say that I'm not
17 even going to address credibility and there is not any credibility
18 issue as to Mr. Johnson, Dr. Kuntz and Mr. Lotter. Their
19 testimony was what it was and there wasn't really any question
20 about the way the labs handled the testing when they received it
21 or the way Ameriflight handled this situation that occurred that
22 day.

23 So, let me talk about Dr. Jaworski's testimony. She is
24 certified and board -- well, I don't know if there's a board
25 certification but she is a certified medical review officer. And

1 as I said, she probably took Dr. Upfal's test but she passed it.
2 But she does have vast experience involving the Department of
3 Transportation drug test. And Dr. Upfal hasn't done one of these
4 for a year, and then it was involving truckers. And so, I think
5 from an experience standpoint, Dr. Jaworski, although she may have
6 a medical opinion, she believed that and it was her opinion that
7 this was not a fatal flaw. She said she received these perhaps on
8 a daily basis where the lab copy had one thing and her copy was
9 different, but as long as the lab copy was consistent with the
10 procedure, then she was okay with it.

11 And as I indicated when I overruled the motion for
12 summary judgment, I don't think, and I still don't think that this
13 problem with the temperature impacted the issue of chain of
14 custody. The lab copy is the one that's important for the chain
15 of custody and it was consistent all the way through. Although
16 Dr. Upfal thought that lack of consistency among the five copies
17 presented a problem, it was a medical and scientific problem. But
18 I don't think from our standpoint, and our being the Board
19 standpoint, that there was a chain of custody issue here.

20 Mr. Rogers, there was no credibility issue with his
21 testimony and it basically was reconfirmed by the Respondent,
22 Mr. Walker. A couple of things about Mr. Walker's testimony did
23 concern me. One was the fact he said he signed this Part 5 but he
24 didn't read it. I hear cases almost on a daily basis involving
25 people who don't read their medical applications and sign it, and

1 that absolutely is a revocable offense. In our business, if you
2 read this document, this application, and you signed it and you
3 didn't understand or you didn't read that, that's not an excuse
4 and the Board treats that as intentional falsification. So, I had
5 a problem with that comment.

6 But the second one and probably the most troubling thing
7 about his testimony, and really, and I still don't know how to
8 deal with it except as some sort of credibility issue, is the fact
9 that when he woke up on that Sunday morning he knew, he testified
10 under oath here today, he knew he had been drugged. And yet he
11 didn't take any steps to try to -- he didn't know what the drug
12 was; he just said he knew he had been drugged. And he went out at
13 4:00 the next morning and flew an airplane in air commerce and
14 then he goes back on Tuesday morning, he's still flying, and the
15 only suggestion here is that this failed drug test relates back to
16 something that might have happened on Saturday night. But the
17 Department of Transportation didn't know what had happened and
18 Ameriflight didn't know what had happened and the FAA didn't know
19 what had happened, but Mr. Walker believed that he'd been drugged.
20 So, that certainly relates to his credibility, but it even
21 suggested obligation on his part to have gone and done something
22 about it, but he didn't.

23 As I said, I think under the evidence that although I'm
24 troubled by the must as it appears in the regulation, the Board
25 has held in a number of cases that that's de minimis and that it

1 certainly didn't relate in this case to, in my opinion, to the
2 chain of custody issue. I feel that the failed drug test was a
3 valid test even though this documentation of the different forms
4 was inconsistent. And as I said, Mr. Walker had an affirmative
5 obligation to establish that he had been subject to some sort of
6 inadvertent administering of cocaine, which is what he tested for,
7 but there was no evidence of that. There was a polygraph that
8 suggested he is truthful but there's any number of questions that
9 weren't asked on the polygraph. But the ones that he asked which
10 involved some direct knowledge he was truthful about. I didn't
11 have a problem with that.

12 Dr. Henson's report goes to what he believed was a
13 flawed procedure that was involved, and we've already dealt with
14 that. And then Dr. Serpa -- I mean, to digress a bit, R-17 was
15 Dr. Henson's report and he talked in that report and it was very
16 much a hearsay document. It wasn't notarized or anything but it
17 was presented here today and copies had been provided to the
18 Administrator. But he says that it was a flawed test. Well, I've
19 already dealt with that issue. Dr. Serpa says that there was no
20 substance dependency on the part of this Respondent, he tested in
21 the clear for all that. And as pointed out by counsel, one, it's
22 hearsay, but whether or not he is drug dependent is not the issue
23 here today, it's whether he tested positive on the 28th of June.

24 And then the polygraph, and I've already discussed that,
25 that was R-20, the polygraph exam and then the CV of the polygraph

1 examiner was R-21. And Dr. Upfal's CV was -- let's go off the
2 record a minute.

3 (Off the record.)

4 (On the record.)

5 ADMINISTRATIVE LAW JUDGE MULLINS: Dr. Upfal's CV was
6 Exhibit R-22 and he's a highly qualified individual with a large
7 CV, and counsel for the Administrator suggested it's not the
8 weight of the CV that should determine your credibility, although
9 I have had other hearings when the Administrator has taken a
10 little bit different position on that issue.

11 But in any event, I've discussed all of this and I
12 believe that the preponderance of the evidence would establish
13 that this was a valid positive test for cocaine and that there was
14 a failure of reliable and probative evidence to establish that for
15 some reason this was some drug that was introduced to the
16 Respondent without his knowledge. And I understand these are
17 really difficult cases and they're all obviously difficult for the
18 Judge, but that requires a form of proof by a preponderance of
19 evidence that I just don't believe that that was established here
20 today. And therefore, I find that the Emergency Order of
21 Revocation should be and will be sustained.

22 ORDER

23 IT IS THEREFORE ORDERED that safety in air commerce and
24 safety in air transportation requires an affirmation of the
25 Administrator's Order of Revocation, as issued.

1 And specifically, I find that there was established by a
2 preponderance of the evidence a positive drug test and all of the
3 accompanying documents that went with that test that was
4 administered on the 28th of June of 2011. And I also found that
5 there was not established by a preponderance of the evidence
6 affirmative defense of some involuntary legitimate reason for this
7 positive test, which the obligation was on the part of the
8 Respondent.

9 And therefore, the order as issued will be affirmed
10 revoking Respondent's airman medical certificate and all pilot
11 certificates that he holds, and it is so ordered.

12

13

14 WILLIAM R. MULLINS

15

16 Administrative Law Judge

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19 APPEAL

20

21 ADMINISTRATIVE LAW JUDGE MULLINS: All right. Does the
22 Administrator have any question about the order?

23

24 MR. RUNKEL: No, Your Honor.

25

26 ADMINISTRATIVE LAW JUDGE MULLINS: And the Respondent?

27

28 MR. PROSSNITZ: No, Your Honor.

29

30 ADMINISTRATIVE LAW JUDGE MULLINS: Okay. Mr. Walker,
31 you have the right to appeal this order and you may do so by
32 filing your Notice of Appeal within 10 days of this date. The

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1 Notice of Appeal goes to the National Transportation Safety Board,
2 Office of Administrative Law Judges at Room 4704, at 490 L'Enfant
3 Plaza East, S.W., Washington, D.C., ZIP is 20594. And if you do
4 file a Notice of Appeal, then within 50 days of this date, you
5 must file an appeal -- I mean a brief perfecting that appeal. And
6 that brief should go to the same street address but to Room 6401,
7 which is the Office of General Counsel of the National
8 Transportation Safety Board. The timing is critical, the 10 days
9 and the 50 days, and a failure to meet either of those dates would
10 result in the dismissal of the appeal by the Safety Board.

11 Mr. Barnett, I would ask you to come up and I'll hand
12 you a written copy of your client's appeal rights of this decision
13 today. And any question about that I'll answer at this time, but
14 it has those times and it has the addresses and there's also some
15 phone numbers on there if you have any questions there.

16 I have a copy of this if the Administrator would like a
17 copy should they appeal it, although I think the Administrator
18 probably keeps a pile of these in their office.

19 MR. RUNKEL: Yes, that's not necessary, Your Honor.

20 ADMINISTRATIVE LAW JUDGE MULLINS: All right. As I
21 said, these are difficult cases. I'm not unaware of the fact that
22 Mr. Walker has devoted a great deal of his life trying to become a
23 professional pilot. His bachelor's degree is in aviation. He has
24 an intermediate degree also related to aviation. And in that
25 respect, this kind of cases are tragic. But the evidence -- I

1 don't create the evidence or the facts or the situations that come
2 before me. And I just -- I think it was well tried on both sides.

3 We'll then recess.

4 (Whereupon, at 4:23 p.m., the hearing in the above-
5 referenced matter was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: David Steven Walker

DOCKET NUMBER: SE-19145

PLACE: Chicago, Illinois

DATE: April 3, 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.



John Allen
Official Reporter