SERVED: December 16, 2013

NTSB Order No. EA-5692

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 13th day of December, 2013

MICHAEL P. HUERTA, Administrator, Federal Aviation Administration, Complainant, v. JODY DUCOTE, Respondent.	)	Docket SE-19290

ORDER DISMISSING PETITION FOR RECONSIDERATION

The Administrator has filed a petition for reconsideration of NTSB Order No. EA-5664, served June 12, 2013.[1] The Administrator contends our analysis of our stale complaint rule, codified at 49 C.F.R. § 821.33,[2] was erroneous, and that our affirmation of the law judge's determination that respondent did not intentionally falsify pilot records was also incorrect.

[1] In addition to the petition, the Administrator requested a stay of the Board's order granting respondent's appeal, which the Acting General Counsel granted under delegated authority on July 12, 2013.

[2] Infra note 9.

Section 821.50 of our Rules of Practice govern the submission and our review of petitions for rehearing, reargument, reconsideration or modification of an order of the Board. In a Final Rule that took effect November 15, 2012,[3] we amended § 821.50(c) to provide as follows concerning the content of such petitions:

> The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable, and shall explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed. *To the extent the petition is not based upon new matter, the Board will not consider arguments that could have been made in the appeal or reply briefs received prior to the Board's decision*.[4]

In addition, section 821.50(d) states, "[r]epetitious petitions will not be entertained by the Board, and will be summarily dismissed."

In our June 12, 2013 opinion and order, we considered the Administrator's arguments concerning the stale complaint rule and intentional falsification. This petition, dated July 12, 2013, presents the same arguments we considered and rejected on review of petitioner's appeal. Therefore, we dismiss this petition as repetitious under 49 C.F.R. § 821.50.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition is dismissed.

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

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[3] 77 Fed. Reg. 63245, 63252 (Oct. 16, 2012).

[4] 49 C.F.R. § 821.50(c) (emphasis added).