

SERVED: December 22, 2014

NTSB Order No. EA-5736

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 22nd day of December, 2014

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19624
v.)	
)	
JOSEPH A. McGUIRE,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued June 11, 2014, following a hearing.¹ In his decision, the law judge affirmed the Administrator’s order suspending respondent’s airline transport pilot (ATP) certificate and any

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

other certificates respondent holds for a period of 150 days.² The law judge determined respondent violated 14 C.F.R. §§ 91.203(a)(1),³ 91.405(a)⁴ and (b),⁵ 91.407(a),⁶ and 91.13(a),⁷ by operating an aircraft as pilot-in-command on a passenger-carrying flight before the aircraft had been returned to service after correcting a discrepancy and before maintenance was completed. We grant respondent's appeal, in part.

A. *The Administrator's Order*

The Administrator's order, issued January 22, 2014, alleged respondent, who is the director of operations and a pilot for MC Aviation Corporation, departed in a Hawker HS 125 from Oxnard, California with the intention to proceed to Medford, Oregon on June 25, 2013. However, shortly after departing, respondent diverted to Oakland International Airport (Oakland) due to an illuminated "Fuel 2 O/H light."⁸ At Oakland, personnel from KaiserAir, Inc.,

² The law judge mentioned respondent also holds a mechanic certificate; however, the order did not seek a penalty related to that certificate. Tr. 7.

³ Section 91.203(a)(1) states, except as provided in § 91.715 [regarding operations of foreign civil aircraft without airworthiness certificates], no person may operate a civil aircraft unless it has within it an appropriate and current airworthiness certificate.

⁴ Section 91.405(a) states, in part, that each owner or operator of an aircraft shall have that aircraft inspected as prescribed and shall, between required inspections, have discrepancies repaired as prescribed in 14 C.F.R. part 43.

⁵ Section 91.405(b) states each owner or operator of an aircraft shall ensure maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service.

⁶ Section 91.407(a) states no person may operate any aircraft that has undergone maintenance, preventative maintenance, rebuilding, or alteration unless it has been approved for return to service by a person authorized under 14 C.F.R. § 43.7 and the maintenance record entry required by 14 C.F.R. §§ 43.9 or 43.11, as applicable, has been made.

⁷ Section 91.13(a) prohibits operation of an aircraft in a careless or reckless manner so as to endanger the life or property of another.

⁸ Compl. at ¶ 5.

performed maintenance on the aircraft to correct the indication on June 25 and 26, 2013. The order alleged respondent departed from Oakland on June 26, 2013 before maintenance personnel had finished installing “a safety wire on the [fuel control unit (FCU)] drain and a final inspection.”⁹ The Administrator also alleged respondent violated the regulations listed above because he did not ensure personnel had made the maintenance entry before personnel approved the aircraft for return to service as required by 14 C.F.R. § 43.9. On June 26 and 27, 2013, respondent operated the aircraft near King Salmon and Anchorage, Alaska. Once at Anchorage, maintenance personnel inspected the work performed by KaiserAir and approved the aircraft for return to service. In his answer to the Administrator’s complaint, respondent asserted the defense of reasonable reliance.¹⁰

B. *Facts*

On the June 25, 2013 flight, respondent was operating the aircraft carrying the aircraft’s owner, the owner’s wife, and five other passengers. Respondent intended to drop off the owner’s wife in Medford, Oregon, and then fly the remaining passengers to King Salmon, Alaska, for a fishing trip. The flight departed Oxnard and the light indicating hot fuel temperature illuminated. The light went off when respondent reduced power; however, as a cautionary measure,

⁹ Compl. at ¶ 8.

¹⁰ The doctrine of reasonable reliance is an affirmative defense, which, if proven, can excuse a respondent’s admitted violation. Our doctrine of reasonable reliance is one of narrow applicability; in the controlling case concerning reasonable reliance, Administrator v. Fay and Takacs, the Board held, “[i]f... a particular task is the responsibility of another, if the [pilot-in-command] has no independent obligation ... *or* ability to ascertain the information, and if the captain has no reason to question the other’s performance, then and only then will no violation be found.” NTSB Order No. EA-3501 at 10 (1992) (emphasis in original).

respondent opted to fly to Oakland, because it was the closest airport with a maintenance facility equipped to address the issue.¹¹

Once at Oakland, KaiserAir mechanic Larry Steinwandt removed the fuel control pump assembly and ordered a new component to be shipped to KaiserAir overnight. Respondent returned to KaiserAir the following morning. Around noon, respondent recalled KaiserAir mechanics had completed their ground tests, and they taxied the aircraft to the run-up area, where they completed engine run-ups. After the engine run-ups, mechanic Alec Stevens, who was supervising Mr. Steinwandt's work, told respondent, "okay, let's head back to the ramp and I'll get all the paperwork going and get you out of here as quick as we can."¹² The parties do not dispute respondent stayed at Oakland to fuel the aircraft and stock it with ice and catering supplies for at least one hour following the completion of the engine run-ups. During the hour, respondent also wrote and left a handwritten note stating, "Alec, Please complete corrective action. Show 'S/N off/on for parts.' Thanks to you and Larry. Send all 3 copies to Jim Consolo."¹³ Respondent also left three carbon copies of an MC Aviation flight log sheet for KaiserAir mechanics to complete and forward to MC Aviation's Director of Maintenance. Respondent kept a pink carbon copy, designated for accounting.

Regarding respondent's departure, Mr. Steinwandt's testimony was consistent with respondent's testimony. Mr. Steinwandt testified he walked to the ramp area and saw the aircraft with the doors closed and the engines running. The Hawker was not yet taxiing. Mr. Steinwandt

¹¹ Tr. 72 (respondent's testimony that he contacted MC Aviation's Director of Maintenance, who recommended respondent arrange for maintenance with KaiserAir at Oakland).

¹² Tr. 44.

¹³ Exh. A-5; Tr. 40.

recalled picking up “some debris from the floor, from the ground, and waited for a minute.”¹⁴

Mr. Steinwandt stated he saw another aircraft approaching “across the nose of the Hawker,” and it was “a tight area in there,” so Mr. Steinwandt backed away and signaled to the pilot that he was clear of the nose of the Hawker.¹⁵ Once clear, Mr. Steinwandt saw the Hawker begin to roll. He watched the aircraft rolling, but testified he did not make any efforts to stop it or to signal respondent to indicate the maintenance was incomplete.

Mr. Steinwandt returned to the hangar and informed Mr. Stevens that respondent had departed in the Hawker. Mr. Stevens reacted in disbelief, because they had not yet issued the airworthiness release. Mr. Stevens testified he found the post-it note and the carbon copies of the flight log on the front desk after the aircraft departed. Mr. Stevens stated he tried to call respondent’s cell phone and tried to reach respondent via radio, but respondent did not answer. Respondent testified he did not receive a voice mail regarding his departure in the aircraft.

Mr. Stevens made maintenance entries on the aircraft flight log following the aircraft’s departure; one entry stated, “the aircraft is not to be considered airworthy at this time for the following reasons: safety wire not installed on FCU drain.”¹⁶ Mr. Stevens stated he wrote this because the aircraft had departed prior to respondent’s completion of the final inspection and before all the maintenance was accomplished. Mr. Steinwandt testified he documented his work on the KaiserAir Work Form before respondent departed. Following the departure, Mr. Stevens made an annotation duplicative of his note on the flight log, indicating the aircraft could not be

¹⁴ Tr. 55.

¹⁵ Id.

¹⁶ Exh. A-1.

considered airworthy, at the bottom of the work form.¹⁷

C. Law Judge's Oral Initial Decision

At the conclusion of the hearing, the law judge determined respondent's operation of the aircraft from Oakland, in the absence of an indication that a "sign-off" had occurred, amounted to a violation of 14 C.F.R. § 91.203(a).¹⁸ The law judge also noted 14 C.F.R. § 91.405(a) and (b), as well as § 91.407, use the word "shall"; therefore, he reasoned, the sign-off was mandatory, and respondent's operation of the aircraft without having obtained it violated these regulations.

The law judge acknowledged respondent's assertion of the reasonable reliance defense; however, he noted the defense is "narrowly construed." The law judge found respondent's failure to view the written return to service was a violation because he never "ensured" the maintenance records would be completed.¹⁹ The law judge cited Administrator v. Sugden and Administrator v. Easton, for the Board's holding that a pilot-in-command could not simply rely upon a mechanic's statement for purposes of §§ 91.405 and 91.407.²⁰ The law judge further noted maintenance personnel are not required to keep an aircraft from departing when they believe it is unairworthy; in this regard, the law judge stated no action or inaction by KaiserAir employees excused respondent's conduct.

Regarding sanction, the law judge stated respondent is held to a high standard of care and judgment, due to the fact he holds an ATP and mechanic certificate. However, the law judge

¹⁷ Exh. A-6.

¹⁸ Initial Decision at 125.

¹⁹ Id. at 127.

²⁰ Id. at 128 (citing Sugden, NTSB Order No. EA-5128 (2004) and Easton, NTSB Order No. EA-4732 (1998)).

believed respondent took reasonable action when he first noticed the illuminated temperature indicator. As a result, the law judge reduced the suspension period from 150 days to 140 days. The law judge did not accept respondent's argument he was eligible for a waiver of sanction under the Aviation Safety Reporting Program (ASRP) based on his determination respondent's actions were not inadvertent.²¹

D. Issues on Appeal

On appeal, respondent presents two main issues, both of which focus on the sanction the law judge imposed. First, respondent contends the law judge erred in issuing a 140-day suspension period because the Pilot's Bill of Rights²² requires NTSB administrative law judges to make "independent" decisions concerning sanction, and because the Administrator's Sanction Guidance Table suggests a suspension period of 105 days, which should be further decreased due to mitigating factors. Second, respondent argues respondent's actions were inadvertent, and he is therefore eligible for a waiver of sanction under the ASRP.

2. Decision

On appeal, we review the law judge's decision *de novo*, as our precedent requires.²³

²¹ Under the ASRP, the Administrator may waive the imposition of a sanction, despite the finding of a regulatory violation, as long as certain requirements are satisfied. Aviation Safety Reporting Program, Advisory Circular 00-46E at 4, ¶ 9c (December 16, 2011). The Program involves filing a report with the National Aeronautics and Space Administration (NASA), which may obviate the imposition of a sanction by the Federal Aviation Administration (FAA) where: (1) the violation was inadvertent and not deliberate; (2) the violation did not involve a criminal offense, accident, or action found at 49 U.S.C. § 44709; (3) the person has not been found in any prior FAA enforcement action to have committed a regulatory violation for the past five years; and (4) the person completes and mails a written report of the incident to NASA within 10 days of the violation.

²² Pub. L. No. 112-153, 126 Stat. 1159, 1160-61 § 2(c)(2) (2012).

²³ Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order

A. *Sanction Determination*

Respondent contends the Pilot's Bill of Rights requires NTSB administrative law judges to make independent judgments concerning what penalty, if any, is appropriate, rather than deferring to the Administrator's choice of sanction. Respondent bases this assertion on § 2(c)(2) of the Pilot's Bill of Rights, which struck from 49 U.S.C. § 44709(d)(3) the statement that the Board is "bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law." Since the enactment of the Pilot's Bill of Rights, we have stated Martin v. Occupational Safety and Health Review Commission²⁴ is instructive in clarifying the appropriate extent of deference with which we should view the Administrator's interpretation of the Federal Aviation Regulations and the Administrator's choice of sanction.²⁵ In this regard, consistent with Martin, the removal of the heightened deference previously codified in § 44709(d)(3) does not mean the Board, or NTSB administrative law judges, should decline to apply any deference. Instead, we will defer to the Administrator when the regulation or choice of sanction is unclear and the Administrator offers an interpretation that is *reasonable*.²⁶ Such a determination of reasonableness leads us to consider the Administrator's interpretations and choice of sanction in conjunction with the facts of each case. In particular,

No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

²⁴ 499 U.S. 144, 111 S.Ct. 1171 (1991).

²⁵ Administrator v. Jones, NTSB Order No. EA-5647 at 19-21 (2013).

²⁶ Martin, supra note 24 at 145.

we will consider aggravating and mitigating factors in determining whether the Administrator's choice of sanction was reasonable.²⁷

1. *Mitigating Factors*

We believe mitigating factors, among other considerations, weigh in favor of reducing the sanction. Respondent and both mechanics from KaiserAir who testified at the hearing all recalled completing tests and engine run-ups, after which Mr. Stevens informed respondent he could be on his way soon. Respondent waited at least one hour before departing, and presumed, based upon his conversation with Mr. Stevens, the work was completed and the necessary paperwork was finished. The Administrator does not dispute respondent's state of mind in this regard. Mr. Steinwandt testified he picked up debris near the aircraft just before the Hawker began rolling. This type of activity could give the impression the mechanics expected respondent to depart, and he was not obligated to wait any longer. Messrs. Stevens and Steinwandt did not communicate clearly with respondent concerning the status of the aircraft. Respondent believed the aircraft had been returned to service before he operated it; he based this belief on the following facts:

I was told when we left -- (1) we were finished with the engine run-up that [was] done; (2) that it was only going to take 10 minutes to do the paperwork; and (3) we had an hour on the ramp before we even left the ramp, and we had a 20-minute taxi from the ramp before we got to the takeoff point.²⁸

The Administrator did not rebut respondent's summary of these facts, all of which we believe are mitigating factors. In addition, we agree with the law judge's assessment that respondent acted reasonably when, as a cautionary measure, he quickly contacted MC Aviation's Director of Maintenance upon seeing the Fuel 2 O/H light. These factors, in our judgment,

²⁷ Jones, supra note 25 at 21.

²⁸ Tr. 81.

outweigh the aggravating factors the Administrator asserts led to the 150-day proposed sanction: the fact respondent is a pilot who holds both an ATP and a mechanic certificate.²⁹ While such certificate holders are held to a high standard of care, this does not outweigh the undisputed facts listed above, which we view as mitigating.

Furthermore, the Administrator's attorney stated the Administrator did not take into account the violation of 14 C.F.R. § 91.203(a)(1) when "setting the sanction in this case."³⁰ As a result, for purposes of determining the appropriate sanction, we consider only respondent's violations of §§ 91.405(a) and (b), and 91.407(a). At the hearing, the Administrator's attorney stated the Administrator's Sanction Guidance Table does not include a suggested penalty for the aforementioned regulations; however, the Administrator's attorney compared respondent's conduct to a failure-to-check violation and an operation of an aircraft without a requirement instrument or equipment.³¹ These two violations suggest a sanction range of 30 to 90 days each. Respondent concedes he did not physically view a statement returning the aircraft to service, and did not actually check the aircraft log to ensure Mr. Stevens had completed it. We believe a sanction of 30 days each for failure-to-check and operation without the required return-to-service, for a total suspension of 60 days is appropriate in the case *sub judice*.

²⁹ See, e.g., Administrator v. Tidwell, NTSB Order No. EA-5711 (2014) (citing Administrator v. Moeslein, NTSB Order No. EA-5354 at 14, 16-17 (2008) (stating holders of ATP certificates are held to the highest degree of care, and declining to reduce sanction on the basis of economic hardship).

³⁰ Tr. 98. The regulation prohibits a person from operating a civil aircraft unless it has within it an appropriate or current airworthiness certificate. At the hearing, the Administrator's attorney cited 14 C.F.R. § 21.181(a)(1) to assert an airworthiness certificate is effective only as long as maintenance on the aircraft has been performed in accordance with 14 C.F.R. parts 43 and 91. However, the complaint does not include a reference to § 21.181(a)(1), nor does not state the basis for the Administrator's charge that respondent violated 14 C.F.R. § 91.203(a)(1).

³¹ Tr. 99 (stating the required instrument respondent was missing was the written return-to-service).

2. *Doctrine of Reasonable Reliance*

The law judge's and the Administrator's reliance on Easton for purposes of the violations charged is helpful only to the extent it precludes respondent from using the affirmative defense of reasonable reliance. In Easton, the mechanic told respondent he was "good to go," but then told the respondent that the cabin heater was not repaired.³² In addition, the mechanic left the gear door linkage rods disconnected when he had attempted to repair it. The Board's opinion in Easton suggests the respondent could have easily discovered the disconnected rods upon finishing his preflight inspection. The respondent operated the aircraft while it was in an unairworthy condition, and in the absence of maintenance records indicating the work done. The Board rejected respondent's proposed defense of reasonable reliance, and held respondent had an independent duty to ensure his aircraft was airworthy, notwithstanding the mechanic's statement to him.

Easton is only edifying for the Administrator's case to the extent it shows the Board rejects the affirmative defense of reasonable reliance in cases where an airman is responsible for ensuring maintenance records are complete. We agree with this conclusion, as the circumstances in the case *sub judice* do not fulfill the criteria of reasonable reliance. Respondent did not need to rely on any person's specialized, technical expertise to check maintenance paperwork to determine whether the aircraft had been returned to service. His reliance on the statements and conduct of Messrs. Stevens and Steinwandt does not, *in toto*, excuse his decision to take off.

B. *Aviation Safety Reporting Program*

Finally, as mentioned above, respondent contends he is eligible for a waiver of sanction based on the ASRP. The Administrator agrees respondent's conduct did not involve a criminal

³² Administrator v. Easton, NTSB Order No. EA-4732 at 5-6 (1998).

offense, respondent does not have any prior FAA enforcement action in the past 5 years, and filed a timely ASRP report with NASA.³³ The Administrator further conceded respondent's conduct was not deliberate; instead, the Administrator only asserts respondent is not eligible for a waiver of sanction because his conduct was not inadvertent. We agree respondent did not *inadvertently* take off from Oakland without a qualified mechanic providing a document specifying he or she had returned the aircraft to service. Respondent knew, at the time he took off, that he had not actually viewed such a document. Therefore, we agree with the law judge's conclusion respondent is not eligible for a waiver of sanction under the ASRP.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted, in part;
2. The law judge's decision is affirmed, in part; and
3. The 60-day suspension of respondent's ATP certificate, and all other airman certificates respondent holds, shall begin 30 days after the service date indicated on this opinion and order.³⁴

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

³³ See supra note 21 (listing ASRP requirements).

³⁴ For the purpose of this order, respondent must physically surrender his certificates to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

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

* * * * *

In the matter of: *

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

Complainant, *

v. *

Docket No.: SE-19624
JUDGE GERAGHTY

JOSEPH A. McGUIRE, *

Respondent. *

* * * * *

National Labor Relations Board
888 South Figueroa Street
Courtroom 903
Los Angeles, California 90017

Wednesday,
June 11, 2014

The above-entitled matter came on for hearing, pursuant
to Notice, at 9:30 a.m.

BEFORE: PATRICK G. GERAGHTY
Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

ADAM RUNKEL, ESQ.
Federal Aviation Administration
Western Pacific Office of the Regional Counsel
15000 Aviation Boulevard
Lawndale, California 90251
(425) 227-2914

On behalf of the Respondent:

SCOTT W. WILLIAMS, ESQ.
The Small Business Law Firm, PC
299 West Hillcrest Drive, Suite 214
Thousand Oaks, California 91360
(855) 524-9529

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ORAL INITIAL DECISION AND ORDER

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ADMINISTRATIVE LAW JUDGE GERAGHTY: This has been a proceeding before the National Transportation Safety Board on the Appeal of Joseph A. McGuire, herein after Respondent, from an Order of Suspension which seeks to suspend his Airline Transport Pilot Certificate and any other pilot certificate held by him for a period of 150 days. The Order of Suspension serves as the Complaint herein and was issued on behalf of the Administrator of the Federal Aviation Administration, herein the Complainant.

14

The matter has been heard before this Judge and, as provided by the Board's Rules of Practice, I am issuing a Bench Decision in the proceeding.

17

Pursuant to notice issued on March 18, 2014, this matter was called for hearing on June 11, 2014 in Los Angeles, California. The Complainant was represented by one of his Staff Counsel, Adam Runkel, Esquire, of the Federal Aviation Administration, Western Pacific Region. The Respondent was present at all times and was represented by his Counsel, Mr. Scott Williams, Esquire, of Thousand Oaks, California.

24

Parties have been afforded full opportunity to offer evidence, to call, examine and cross-examine witnesses, and to

25

1 make argument in support of their respective positions.

2 In reviewing the evidence of record, I will summarize
3 that evidence to the highlights and that which leads me to the
4 conclusions I have reached herein. I have, however, considered
5 all of the evidence, both oral and documentary, and the
6 evidence that I don't specifically mention is viewed by me as
7 either not materially affecting the outcome of the decision or
8 as being essentially collaborative of that which I do
9 reference.

10 AGREEMENTS

11 By pleading, it was agreed there was no dispute as to
12 the following allegations made in the Complaint: It is
13 admitted that the allegations in Paragraphs 1 through and
14 including 7 of the Complaint are admitted. Also, it was
15 admitted that the allegations contained in Paragraphs 11
16 through 14 were admitted. Therefore, all of those Paragraphs
17 which were admitted containing those allegations are taken as
18 having been established for purposes of this Decision.

19 DISCUSSION

20 The Complainant's case is made through the testimony
21 of several witnesses and 10 admitted exhibits. First of the
22 witnesses was Mr. Michael Rizzo. He's with the Federal
23 Aviation Administration, stationed at the Van Nuys Flight
24 Standards District Office, FSDO. He's an Aviation Safety
25 Inspector and he was, and maybe still is, but was the Principal

1 for MC Aviation Corporation, the owner of the aircraft that was
2 the subject of this proceeding. Mr. Rizzo testified that in
3 the course of his investigation he spoke with the Respondent on
4 the telephone telling him he was going to send him information
5 concerning the Pilot Bill of Rights. The Respondent signed off
6 that he had received that information, and then subsequently,
7 the two of them had a telephone conversation in which Mr. Rizzo
8 inquired of the Respondent what had occurred at the time of
9 this event, which is June 25 through June 26, 2013.

10 Mr. Rizzo stated that the Respondent told him that
11 after the run-up of the aircraft, that having had maintenance
12 performed on it, that he, the Respondent, thought that all the
13 maintenance had been completed and therefore he departed the
14 aircraft from Oakland, which is where the work was being done;
15 and that the mechanics from KaiserAir, the maintenance
16 facility, were by the aircraft at the time of his departure.
17 He also, according to Mr. Rizzo, stated to Mr. Rizzo that he,
18 the Respondent, should have waited for a sign-off. That
19 testimony by Mr. Rizzo was never contradicted.

20 Mr. Rizzo also testified there was one other phone
21 conversation in July of that year, discussed that the cowls on
22 the aircraft had been opened for the run-up were then closed.
23 Kaiser people, according to the Respondent, did not try to stop
24 him from his departure from Oakland, and that there also was
25 nothing in the aircraft which was to alert the Respondent that

1 maintenance sign-offs or release of the aircraft had not been
2 completed.

3 Mr. Rafael Munguia is also with the FAA, for about 6½
4 years. He's also at the Van Nuys FSDO. He's an Airworthiness
5 Inspector. He essentially was involved in the investigation
6 and to partake to the extent of collecting records. Going
7 through the exhibits, records that he identified as collected
8 from the originals are A-1, which is an MC Aviation Aircraft
9 Flight Log. It's number 221634. This is the copy, and
10 according to him, the only copy that he saw was this white
11 copy.

12 A-3, he also indicated he collected this from MC
13 Aviation. This is the next flight log in sequence, 221635, and
14 it shows a discrepancy and corrective action taken with respect
15 to that discrepancy. A-1, of course, shows the discrepancy
16 which was with the fuel pump, the number 2 engine, and there is
17 also a statement at the bottom that the aircraft is not
18 airworthy at the time, that is, the time of departure, and that
19 the safety wire had not been installed. That's signed off by
20 Mr. Stevens, and I'll discuss his testimony subsequently.

21 According to the testimony from Rafael is that, with
22 respect to A-3, it also shows that the safety wire discrepancy
23 had been corrective action. If we're looking at A-3, that
24 should be taken in conjunction with Exhibit A-4, which is a
25 sign-off, which is accomplished in Anchorage, Alaska. So

1 actually, the paperwork on this aircraft, according to the
2 exhibits, was not corrected with a sign-off in the records as
3 required until the aircraft was reinspected in Anchorage,
4 Alaska. As shown on A-4, the safety wire and inspection were
5 then performed, which would be actually with a departure on the
6 testimony, with the aircraft from Oakland, a stop in Oregon,
7 and then from Oregon to Anchorage. And then from there, to
8 apparently some other stop for fly-fishing.

9 A-2 is an excerpt from the MC Aviation Part 135
10 Maintenance Manual, and although this flight, by agreement, was
11 a Part 91 flight operation, the fact is that MC Aviation is the
12 holder of an air carrier certificate and he maintains -- that
13 is, MC Aviation maintains the aircraft under Part 135.
14 Therefore, regardless of whether a particular flight operation
15 is Part 135 or Part 91, the maintenance requirements for the
16 aircraft have to be complied with in accordance with the
17 approved MC Aviation Part 135 Maintenance Manual.

18 In the Maintenance Manual, there are separate items
19 which are pertinent to this case. On page 1 of the Maintenance
20 Manual, which is exhibit A-2, under 4(e), it states open items
21 in the aircraft flight logs, which I've referenced, must be
22 signed off prior to release of the aircraft. "Must" is a
23 mandatory word.

24 Page 3 of Exhibit 2 and item 7 on that page, it
25 states, as pertinent here, a pilot in command will verify that

1 the aircraft on the ground discrepancy, AOG, as cleared on the
2 aircraft flight log, the airworthiness release is signed and/or
3 the proper aircraft maintenance log entry is executed prior to
4 release of the aircraft. Again, it uses "will verify."

5 Page 4 under F.1, "An Aircraft Maintenance Release or
6 aircraft maintenance log entry must be executed after
7 maintenance or alteration has been performed on MC Aviation
8 aircraft."

9 Lastly, on page 6 of A-2 in item 8, I'm quoting
10 again, "Maintenance accomplished away from home base without
11 the presence of MC Aviation maintenance representative," and
12 there's no evidence that any such representative was present in
13 Oakland, "requires the pilot in command to be responsible to
14 verify that all appropriate logbook entries are completed and
15 the aircraft maintenance release on Form MC-3 is signed prior
16 to flight."

17 Those requirements supplement the requirements of the
18 Federal Aviation Regulations, which I will reference
19 subsequently.

20 The next witness for the Complainant was Mr. Alec
21 Stevens. He's the Shift Supervisor at KaiserAir and was on
22 duty on the date in question, and he worked on this particular
23 aircraft along with Larry Steinwandt. The aircraft is
24 identified as N926MC.

25 Mr. Stevens testified with respect to A--1, indicated

1 that he had made the last entry that appears on that page,
2 which I've already cited as to the aircraft being in an
3 unairworthy condition because of the safety wire not being
4 completely completed. Also, he testified with respect to the
5 work order and an entry made to the same effect on Exhibit A-6
6 indicating that he made the entry, I believe is his testimony,
7 he made it on A-6 first and then made the entry on the aircraft
8 log secondary. However, both entries are essentially to the
9 same effect, which is that the aircraft would not be considered
10 as airworthy at the time of its departure because a safety wire
11 had not been installed and it had not been inspected and signed
12 off for release.

13 Mr. Stevens also testified with respect to A-5. A-5
14 is a note, which is a Post-It note which was attached to the
15 logbook page, A-1. It was left there by the Respondent, and it
16 states, "Alec, please complete corrective action. Show sign-
17 off," and I can't make out the last word. "Thanks to you and
18 Larry. Send all three to Jim," somebody, which apparently is
19 maintenance at MC Aircraft Aviation.

20 Significant words there to me are "please complete."
21 That would, to me, imply that at that time the Respondent knew
22 that something needed to be completed, otherwise why say
23 complete it?

24 Mr. Stevens also testified with respect to the
25 actions in the run-up area where the aircraft was taxied down

1 to do an engine run-up to ensure that the replacement to the
2 fuel pump had been done properly. After the run-up, according
3 to Mr. Stevens, he stated to the Respondent that they needed to
4 go back to the ramp for them to do the final paperwork.
5 Specifically, Mr. Stevens testified that, "I did not tell him,"
6 the Respondent, "that it was okay to depart."

7 The next witness was Mr. Larry Steinwandt. He
8 actually was a mechanic working on the aircraft along with
9 Mr. Stevens. He also testified with respect to A-1, indicating
10 that he made the two entries for discrepancy and the corrective
11 action, that is, the replacement of the engine fuel pump,
12 number 2 engine. He testified that the aircraft had not as yet
13 departed when he made those specific two entries. He also
14 testified with respect to A-6, which is a work order form from
15 Kaiser Aircraft, and making a record there showing the work
16 that he had performed; and also the statement at the bottom
17 made by Mr. Stevens, which I've already referenced.

18 This witness testified that he was out on the ramp
19 and went out to the ramp after they had come back from the
20 run-up area. He went out there, according to him, picked up
21 some debris that was on the ground, and then observed that
22 another aircraft was crossing in front of the Respondent's
23 aircraft. At the time, the aircraft engines on Respondent's
24 aircraft were already turning. Then according to
25 Mr. Steinwandt, as soon as the number 2 aircraft had cleared,

1 the Respondent's aircraft started taxiing. He agreed he made
2 no effort to stop the aircraft, indicating that it was a narrow
3 place, a congested area, and that he did not want to get in
4 front of an aircraft with the engines running for safety
5 concerns. He then went back in the office, told Mr. Stevens
6 that the aircraft had departed. Mr. Stevens looked or went
7 outside, and observed the aircraft had departed without them
8 having made the sign-offs in the aircraft logbook or completing
9 a release for the aircraft to depart.

10 Mr. David Street also testified. He's a manager of
11 maintenance with KaiserAir. He testified with respect to
12 Exhibit A-7, which again is a KaiserAir release, and there's a
13 statement at the bottom there also that the work was
14 accomplished in accordance with the maintenance manual. "The
15 aircraft was taken before final inspection and return to
16 service were accomplished." This apparently was also sent in
17 to MC Aviation.

18 That was essentially the Complainant's case-in-chief.

19 The Respondent testified on his own behalf and was
20 the sole witness in his presentation. He admits that he was
21 the pilot in command of the aircraft in question on June 25,
22 2013 and that it was a Part 91 operation carrying the owner of
23 the aircraft, apparently the owner's wife, and some other
24 passengers, dropping people off in Oregon and then proceeding
25 on to Alaska. That was the intended itinerary.

1 He testified that during the -- from the initial
2 departure from Oxnard, I believe, that the aircraft experienced
3 a hot fuel temperature light. They reduced power, the light
4 went out, but out of an abundance of caution, he decided to
5 defer to the nearest airport where satisfactory maintenance
6 could be accomplished; decided on Oakland, KaiserAir, and
7 therefore he ended up at KaiserAir on June 25, with KaiserAir
8 performing maintenance, as I've already discussed.

9 On the next day, June 26, he returned to the airport
10 about 10:30 in the morning. There was still work being done on
11 the aircraft by the two mechanics that I've already referenced,
12 Larry and Stevens; and that about noontime, a run-up was
13 completed on the aircraft. According to the Respondent, that a
14 run-up was done at maximum power, after it was complete, Alec
15 was in the cockpit and said, "We're done here, let's go back to
16 the ramp." That was the original testimony given by the
17 Respondent, and I discussed the second version given on cross-
18 examination.

19 According to the Respondent, Larry and Alec took a
20 golf cart back to the ramp area. He arrived about 10 minutes
21 later because he needed to taxi. And then he stated, "I,"
22 meaning the Respondent, "believe that they had already checked
23 and done the paperwork. When I got back to the ramp, it was
24 about 1 hour elapsed before the time arriving back at the ramp
25 after the run-up and the actual departure." During that time

1 the aircraft was fueled, apparently food and drink were put
2 aboard the aircraft, and the passengers boarded. Also at that
3 point he wrote the note which I referenced as Exhibit A-5, and
4 left that with someone at the counter at KaiserAir.

5 The only copy of the aircraft logs -- and the MC
6 Aviation Aircraft Flight Log apparently has several copies.
7 There's a white maintenance copy, then a canary copy, a pink,
8 and a goldenrod-colored copies. According to the Respondent's
9 testimony, the only copy he had with him when he departed was
10 the pink copy. If we look at the pink copy as received in the
11 exhibits, A-12 and page 19, there is no indication on the pink
12 copy of any sign-off for the maintenance work done or any
13 release of the aircraft for return to service.

14 He stated, that is, the Respondent stated in his
15 testimony, that he thought the aircraft had been released when
16 they left the run-up area and that in the 1 hour he thought
17 everything had been signed off. However, on cross-examination,
18 he did concede that A-5 was a note that he left, and he left
19 the note, and that he had never checked to see if all of the
20 entries had in fact been made and that an approval had been
21 entered for return of the aircraft to service.

22 With respect to A-11, page 7 of the pink copy, again,
23 he indicated that that was the only document that he had at the
24 time he departed from Oakland Airport. He agreed that on that
25 copy, no corrective action for the discrepancy was indicated,

1 that it is not signed off, nor was there any re-approval for
2 return to service.

3 Lastly, when questioned with respect to the
4 statements that I referenced with respect to A-2, the MC
5 maintenance manual, going through each one of those items, the
6 Respondent stated that he agreed, "I had not fulfilled the
7 requirements to their letter, and that I never ensured that an
8 entry had been made after we left the run-up area."

9 To me, that is the pertinent evidence in the case.
10 Of course, the burden of proof rests with the Complainant at
11 all times, and that is, he must sustain by upon a preponderance
12 of the reliable evidence the factual allegations to support his
13 charges of regulatory violation by the Respondent of Sections
14 91.203(a)(1), 91.405(a) and (b), 91.407(a), and lastly,
15 91.13(a) of the Federal Aviation Regulations. Specific
16 provisions of each of those Regulations I'll reference as I
17 proceed in my discussion.

18 With respect to the charged violation of Section
19 91.203(a)(1), that Regulation provides that no person may
20 operate a civil aircraft unless it has within it an appropriate
21 and current airworthiness certificate. This aircraft was put
22 in for maintenance. Maintenance was performed on this
23 aircraft. There was no final sign-off. The evidence in front
24 of me shows that no final sign-off was made for new wiring and
25 there was no release of this aircraft. That was not

1 accomplished until the aircraft was in Anchorage, Alaska.
2 Because the aircraft was unairworthy, apparently because of the
3 discrepancy with the fuel pump and it was replaced with a part
4 flown in from Michigan, the airworthiness certificate was not
5 valid at the time the Respondent operated the aircraft. The
6 certificate itself was valid on its face, but it was not
7 effective because the aircraft was at the time unairworthy.

8 The airworthiness certificate was in a period of a
9 lapse. During that time of the discrepancy until it is
10 corrected and then signed off after an appropriate inspection
11 and returned to service, at that time the airworthiness
12 certificate then becomes effective. Again, you don't have to
13 reapply for a new airworthiness certificate, it's just during
14 the work on the aircraft and the corrective action being taken
15 and then a final inspection, the airworthiness certificate is
16 not valid for purposes of flight. Therefore, on the evidence
17 in front of me, I do find that at the time the Respondent
18 operated the aircraft from Oakland Airport, he did so in
19 regulatory violation of 91.203(a) of the Regulations.

20 Before turning to the remaining sections of the
21 Regulations, I would observe that Part 1 and Part 1.3, that it
22 is stated that where the word "shall" appears in the Federal
23 Aviation Regulations, that is an imperative. That is
24 mandatory. Therefore, when we look at Section 91.405(a), which
25 states that each owner or operator of an aircraft shall have

1 the aircraft inspected and have discrepancies repaired as
2 prescribed in Part 43 of the Chapter, which means that
3 appropriate sign-offs as required in Part 43 have to be
4 accomplished.

5 Similarly in Section 91.405(b), it states that each
6 owner or operator -- and the Respondent was the operator at the
7 time -- of an aircraft shall ensure -- and the word "ensure"
8 means to make certain, and it is essentially the same thing
9 that the MC Maintenance Manual is saying by "verify." The
10 obligation of the pilot in command, on AOG maintenance, the
11 obligation is on the pilot in command who is the ultimate
12 responsible party for the safe operation of that aircraft to
13 ensure, as required here in the Regulation and in the
14 Maintenance Manual, that the maintenance personnel have made
15 appropriate entries for correction of the cited discrepancy in
16 the aircraft maintenance records indicating the aircraft has
17 been approved for return to service. That's a mandatory.

18 It's appropriate to discuss the requirement of
19 91.407(a), which again provides that no person may operate any
20 aircraft that has undergone maintenance and a list of
21 maintenance entry required by Part 43 has been made.

22 The Respondent raises a defense of reasonable
23 reliance under the doctrine enunciated in the case of Fay v.
24 Takacs, which is EA-3501 (1992). However, this defense of
25 reasonable reliance is very narrowly construed by the Board.

1 For application of the doctrine of reasonable reliance as
2 enunciated in that case, the Board has stated that the burden
3 of proof is on the Respondent to show both a factual
4 justification and a legal justification for his reasonable
5 reliance, and that, as a general rule, the pilot in command is
6 responsible for the safe overall operation of the aircraft.
7 Only where the particular task in question here, the
8 maintenance entries and the release, that the pilot has no
9 independent obligation based on regulations or maintenance
10 manuals or operating procedures to ascertain that that task has
11 been completed, or he has no reason to question anyone else,
12 only then will reasonable reliance defense be found.

13 Here, the evidence is that, to me, the Respondent
14 believed or assumed only that maintenance records were going to
15 be completed before he departed. On his own testimony, he
16 never checked. You cannot ensure something if you never look.
17 That was his obligation. That was his obligation even under
18 the Maintenance Manual to "verify". You can't verify if you
19 never check or look to see if a task has been completed.

20 Respondent's testimony, to me, was ambivalent as to
21 what was said to him at the run-up area. But even if Alec had
22 told him, you're good to depart, saying it in exact words, that
23 is still not sufficient for reasonable reliance because, as the
24 Board has stated in Administrator v. Donahue, which is EA-5314,
25 the pilot in command has a duty to ensure the safe operation.

1 The affirmative defense -- and it is cited that
2 in Administrator v. Gerber, which is EA-5715 (2014), that the
3 maintenance record is required regardless, and a regular
4 inspection, and even if not done, the pilot must comply with
5 91.405(a). It's an affirmative defense, and he must show by a
6 preponderance of the evidence the factual basis and the legal
7 justification for that reliance.

8 The Board has also stated in Administrator v. Sugden,
9 EA-5128 (2004), discussing alleged violations of 91.405(b) and
10 91.407(a) that in that case the Respondent failed to
11 independently ensure required maintenance entries were recorded
12 before departing, and it referenced the Easton case.
13 The Easton case is Administrator v. Easton, EA-4732 (1998), and
14 on page 5 in that case, Mr. Easton, the respondent therein,
15 maintains with regards to alleged violations of 91.405 and
16 91.407, there were no entries made describing the work or
17 returning it to service. But the Respondent there, Mr. Easton,
18 maintained that his responsibility under the regulations would
19 be deemed to be satisfied because the mechanic's advice
20 delivered personally, and it was specific in the Easton case,
21 through the fixed base operator, the FBO, that the aircraft was
22 -- and the Board uses that word in quotes, "ready for the
23 Respondent to use." The Board stated, "We do not agree that
24 the Respondent could assume that from such advice that all
25 paperwork relative to the maintenance work on his aircraft had

1 been completed, such that his responsibility to verify," same
2 word used in the MC Aviation maintenance manual, "that it had
3 been completed before operating the aircraft and said to have
4 discharged his duty." They found nowhere in the conclusion
5 that relying upon the mechanic's statement the aircraft could
6 be operated was enough.

7 The Board also said the same thing in Administrator
8 v. Haney, which the Board actually did cite in the Easton case
9 which I just referenced, that maintenance personnel may have
10 also failed to, in their duty, simply illustrates the
11 imperative of the pilot's function and the importance of the
12 pilot's function, but it does not excuse the pilot's conduct in
13 failing to ensure or verify that the appropriate maintenance
14 entries had been in fact made and that the aircraft had in fact
15 been inspected and properly returned to service.

16 Lastly, I would just note in another
17 case, Administrator v. Reid, which is in 4 NTSB 934 (1983), on
18 page 936, they found again that the respondent in that case,
19 even though work had been done, that Respondent Reid had failed
20 to ensure, again that word, maintenance personnel had made
21 entire entries and the required entries in the maintenance
22 records. Therefore, they did find a violation of what was then
23 91.165, which is now re-codified as FAR 91.405(b).

24 On the evidence in front of me, the Respondent had an
25 independent duty under the Regulations and under his

1 Maintenance Manual, but under the Regulations, as I've already
2 discussed, 91.405(a) has the mandatory word: "shall have the
3 aircraft inspected and shall have the discrepancies repaired as
4 required in Part 43." He did not do that. He had that
5 independent duty.

6 Section 91.405(b) required him to ensure that the
7 maintenance personnel made the appropriate entries, including
8 that the aircraft had been returned to service. The fact that
9 maintenance personnel, as I've already discussed in the cases,
10 would have told him even in clear language, you're good to go,
11 depart, leave, a PIC cannot rely on that. That is not ensuring
12 or verifying that the required entries have been accomplished.
13 He, as pilot in command, under the Regulation has an
14 independent duty. It's not something that he could assign to
15 someone else. The fact that the maintenance personnel may have
16 committed an error in not completing the records does not
17 excuse the pilot in command from failing to ensure that the
18 record entries had been accomplished as required under the
19 Regulations. That would be a matter between the FAA and the
20 particular maintenance personnel if they had failed in their
21 duty.

22 With respect to whether or not the maintenance
23 personnel attempted to prohibit or stop the Respondent from
24 departing, there was no duty or obligation shown in any
25 Regulation or requirement in front of me where maintenance

1 personnel are required to attempt to keep an aircraft from
2 departing. Yes, it would probably be good if they could do
3 that. The evidence here is that they attempted to call on the
4 radio and by cell phone. The Respondent indicates in his
5 testimony that he had no record on his cell phone, but there
6 could be other explanations for failure, such as an improper
7 cell that the call didn't go through. But in any event,
8 apparently nothing was done.

9 But at least some effort, on the testimony, and I
10 found that credible, that they made some effort because they
11 were -- according to Mr. Stevens, he was surprised that the
12 aircraft had departed. He personally made the effort to call
13 by phone and by radio to say, hey, we haven't completed the
14 work. But regardless of whether they did that, there's no duty
15 for them to do it. It is up to the Respondent to ensure that
16 the work had been accomplished.

17 I would agree with Mr. Steinwandt. He states he was
18 in a confined area and that the aircraft engines were running,
19 and that for safety purposes he wasn't going to get in front of
20 the aircraft. I think that's a reasonable statement. The
21 aircraft was getting ready to taxi and he got out of the way.
22 Again, whether or not he made any effort to stop the aircraft
23 does not excuse the Respondent from failing to verify and
24 ensure that the required entries were made. So I do not find
25 that any actions or inactions on the part of the Kaiser

1 maintenance personnel in any way excuses the Respondent's
2 conduct in this case.

3 I would simply observe that on the Respondent's own
4 testimony, he had at least an hour between the run-up and the
5 time of the actual departure in which he could have ensured
6 that the maintenance records had, in fact, been accomplished.
7 Yes, the aircraft was being refueled, food and drink, and
8 passengers were being placed on the aircraft, but those were
9 duties that could have been assigned to the co-pilot. The
10 pilot in command had the overall responsibility to ensure the
11 safety of the flight.

12 I, therefore, find that on the preponderance of the
13 reliable evidence and on the case law, that the Respondent must
14 be found to have acted in regulatory violations of the
15 provisions of Section 91.405(a) and (b) of the Regulations, and
16 in violation of the provisions of Section 91.407(a) of the
17 Federal Aviation Regulations.

18 Lastly, I will observe that there are found in this
19 proceeding an operational violation, and therefore under Board
20 precedent, a violation must be found with respect to Section
21 91.13(a), which prohibits an aircraft being operated in a
22 careless or reckless manner so as to endanger the life or
23 property of another. Potential endangerment is sufficient
24 under numerous Board precedents. Here, we have passenger-
25 carrying flights, the aircraft has not been signed off. It was

1 unairworthy as a matter of regulatory finding. Therefore, it
2 was at least a careless operation, which potentially endangered
3 the life or property of others. Therefore, at least as the
4 Complainant states, it is a residual charge and I do find a
5 regulatory violation of the provisions of Section 91.13(a) of
6 the Federal Aviation Regulations.

7 With respect to sanction, the Administrator seeks a
8 suspension of a 150 days of the Respondent's Airline Transport
9 Pilot Certificate, and I would indicate that I have considered
10 the fact that this is the holder of an Airline Transport Pilot
11 Certificate. Under Board precedent, the holder of such
12 certificate is held to the highest degree of care, judgment,
13 and responsibility.

14 The Respondent also is the holder of a Mechanic
15 Certificate, which would at least charge him with a higher
16 knowledge of the requirements of Part 43 of the Regulations
17 than simply an individual who holds a pilot certificate and is
18 not certificated as the holder of the Mechanic Certificate, Air
19 Frame and Powerplant, or whatever other attached ratings there
20 might be. So we have to evaluate the Respondent's actions in
21 that light.

22 I've also taken account of the Sanction Guidance
23 Table and the fact that deference is still required to be shown
24 to the Administrator's choice of sanction. That is clearly
25 stated, if one looks at the comments in the *Congressional*

1 *Record* entered by discussion prior to the enactment of the
2 Pilot's Bill of Rights and also under the case law pertinent to
3 discretion being shown as held in the Court of Appeals.
4 However, I am also taking into the account that the Respondent
5 did exercise what to me was reasonable, prudent judgment in his
6 initial actions.

7 When he departed from Oxnard, he experienced a
8 malfunction in the aircraft. He was able to ameliorate it to
9 some degree by reducing power, but that's really not an
10 assurance that something was not amiss with the engine fuel
11 pump on the number 2 engine. So he took what I think was
12 reasonable and prudent action on his part to divert and land at
13 Oakland where it could be checked out and repaired. The
14 unfortunate thing is that he didn't execute the same degree of
15 responsibility and judgment in the subsequent actions prior to
16 his departure. However, I will give him at least some credit
17 for the exercise of good judgment leading up to the incident at
18 Oakland. Therefore, I will reduce the period of suspension
19 from that of 150 days to 140 days. With that modification, I
20 will affirm the Administrator's Order of Suspension, the
21 Complaint.

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ORDER

IT IS THEREFORE ORDERED that the Order of Suspension, the Complaint herein, be, and the same hereby is, modified to provide for a suspension of 140 days instead of 150 days; that the Respondent's Airline Transport Pilot Certificate and any other airman pilot certificate held by him, is hereby suspended for a period of 140 days; that the Order of Suspension, the Complaint herein, as modified, is hereby affirmed.

Entered this 11th day of June 2014 at Los Angeles, California.

EDITED ON

JULY 13, 2014

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PATRICK G. GERAGHTY

Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE GERAGHTY: Anything further for the record?

MR. WILLIAMS: Yes, Your Honor, I didn't hear any mention of the NASA report.

ADMINISTRATIVE LAW JUDGE GERAGHTY: I'm sorry, and I did overlook that. With respect -- never mind, the note was here. With the NASA report, and I would append this to my Decision and it doesn't change it because, in my view, this is not an inadvertent action. Respondent had his pink copy in the

1 aircraft, he saw there were no entries on the bottom of that.
2 He has an Airline Transport Pilot Certificate, knew or should
3 have known that it was his obligation as the pilot in command
4 to verify and ensure, which he did not do.

5 By that action, he did not do it inadvertently. As
6 the Court of Appeals has held in the *Ferguson* (ph.) case, and
7 they use an analogy of the coffee cup placed on the corner of a
8 table. You place it on the corner of a table, you may not
9 intend for it to be knocked off but you put it in a position
10 where any inadvertence will cause the coffee cup to depart from
11 the table top. In this case, the Respondent had an independent
12 obligation to ensure that the maintenance entries, as required,
13 had been completed. He had nothing in his possession to
14 indicate that that had been done, which should have alerted to
15 him when he looked at the pink copy.

16 Also, as I discussed Exhibit A-5, to me, when he
17 says, Please complete the paperwork, that implies to me that he
18 had knowledge that paperwork had not been completed. Otherwise,
19 why leave that note? Therefore, in my view that this was not
20 an inadvertent action on the part of the Respondent.
21 Therefore, I do not find that he is entitled to -- in position
22 of waiver a period of sanction under the timely filing of the
23 NASA report.

24 I would append that to my Decision, and reaffirm my
25 finding of appropriate suspension of 140 days of his Airline

1 Transport Pilot Certificate and any other pilot certificates
2 held by him.

3 I thank you, counsel, for bringing that to my
4 attention. I'm sorry, I skipped it over in my notes, too many
5 cases to cite. Anything else?

6 MR. RUNKEL: No, Your Honor.

7 ADMINISTRATIVE LAW JUDGE GERAGHTY: Mr. Runkel, would
8 you come up please? I'm giving you a copy of the appeal
9 provisions from an oral administrative decision, and one copy
10 for opposing counsel.

11 The record will reflect that Mr. Runkel has handed a
12 copy to Mr. Williams -- both counsel have copies of the appeal
13 provisions.

14 Nothing further for the record, the proceeding is
15 closed.

16 (Whereupon, at 1:50 a.m., the hearing in the above-
17 entitled matter was closed.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Joseph A. McGuire

DOCKET NUMBER: SE-19624

PLACE: Los Angeles, CA

DATE: June 11, 2014

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.

Steve Hopkins
Official Reporter