SERVED: March 4, 2016

NTSB Order No. EA- 5769

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 3rd day of March, 2016

MICHAEL P. HUERTA, Administrator, Federal Aviation Administration, Complainant, v. JASON PINEDA, Respondent.	)	Docket SE-30162

OPINION AND ORDER

1. *Background*

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued February 2, 2016, following a hearing.[1] In his decision, the law judge affirmed the Administrator's emergency order revoking respondent's mechanic certificate with airframe and powerplant (A&P) ratings, based on respondent's refusal to submit to a required urinalysis

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

for his company's drug and alcohol testing program. The law judge determined respondent violated 14 C.F.R. § 120.7(n) and (o), 49 C.F.R. §§ 40.191(a)(1) and 40.261(a)(1),[2] by not reporting to the drug testing site after his supervisor informed him of his selection for random drug testing on October 9, 2015. We deny respondent's appeal.

A. *The Administrator's Order*

The Administrator alleged respondent performed safety-sensitive aircraft maintenance and preventative maintenance on aircraft for Panasonic Avionics Corporation (Panasonic), a certified repair station authorized to conduct operations under 14 C.F.R. part 145. Panasonic maintained a drug and alcohol testing program in accordance with the provisions of 14 C.F.R. part 120 and 49 C.F.R. part 40. The Administrator's order alleged on October 9, 2015, respondent's supervisor at Panasonic notified respondent that he had been randomly selected for drug testing. Respondent's supervisor directed him to report to a testing site for completion of the testing. Respondent did not report to the testing site and did not submit to the drug test. As a result, the Administrator charged respondent with "refusal to submit" to the required testing and proceeded with an emergency revocation action, on the basis that respondent lacked the qualifications necessary to hold and exercise the privileges of a mechanic certificate with A&P ratings.

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[2] Section 120.7(n) and (o) refer to 49 C.F.R. §§ 40.191 and 40.261 and define a "refusal to submit" to an alcohol and drug test as an employee engaged in conduct including, but not limited to, failing to appear for any test within a reasonable period of time, as determined by the employer, after being directed to do so. Although the complaint cites all the aforementioned regulations, the law judge's decision and the parties' briefs only refer to drug testing. Hence, this Opinion and Order refers to respondent's refusal of a "drug test."

The complaint also lists 14 C.F.R. 120.15(b)(2), which states a holder of a certificate issued under 14 C.F.R. part 65 who refuses to submit to a drug test as required under 14 C.F.R. part 120 is subject to suspension or revocation of any certificate or rating issued under 14 C.F.R. part 65.

B. *Facts*

Following the Administrator's issuance of the emergency revocation order and respondent's timely appeal of the order, the law judge conducted a hearing, at which the Administrator presented evidence to establish Panasonic's procedure for receiving lists of Panasonic employees who perform safety-sensitive functions who are due for random drug and alcohol testing. After Panasonic's human resources department receives a list, staff in the department collect paperwork on each employee named on the list and forward the packages to base stations at Panasonic's locations.[3] Staff at the base stations determine when the selected employees will be available for testing.[4]

On or about October 1, 2015 respondent informed staff at Panasonic that his final day of employment at the company would be October 9, 2015. Staff at Panasonic knew of respondent's upcoming termination of employment before the automatically generated list of names for drug testing came out.[5] On October 8, 2015, respondent went to dinner before his final shift, which was to begin at 10:00pm and last until 7:00am on October 9. He stated that, at approximately 6:30pm, while at dinner, he consumed a beer.[6] At 10:00pm, he arrived at work wearing his uniform. His supervisor, Sergio Obregon, presented him with paperwork concerning his random drug test. Mr. Obregon recalled respondent "politely declined" to take the test and informed Mr. Obregon respondent had consumed a beer at dinner. Mr. Obregon had never dealt with a refusal so he called his supervisor. When he came back after the phone call, respondent was no longer there. Mr. Obregon called respondent and learned he was on his way to the airfield at

[3] Tr. 48-51.

[4] Tr. 58.

[5] Tr. 63-64.

[6] Tr. 120-21.

LAX, driving a company vehicle. Mr. Obregon asked respondent to return to the testing site and told respondent he could not allow him to perform work. Mr. Obregon then told respondent, "this is your last day, we'll just go ahead and process you out."[7]

Respondent testified he did not intend to work on October 8-9, even though he was scheduled to do so, and arrived at Panasonic wearing his uniform for work. He testified when Mr. Obregon called him to inquire of his whereabouts, he informed Mr. Obregon he was not proceeding to the airfield for work, but instead was on his way to a convenience store. Respondent stated he refused to consent to the drug test because he believed he did not need to do so on his final day of employment with Panasonic. Respondent stated he wore his uniform simply because he planned to "come in later."[8] During his closing argument, respondent's attorney argued the drug test was not random but was pre-planned by Panasonic because leadership at the company knew respondent's final day of employment was October 9 and intended to affect adversely respondent's future opportunities.

C. *Law Judge's Oral Initial Decision*

At the conclusion of the hearing, the law judge found the Administrator proved respondent had refused to submit to a drug test. The law judge determined respondent's testimony, particularly that he did not intend to work on October 8-9, yet arrived for work wearing his uniform, was not credible.[9] The law judge determined the drug test was random; he stated it was obvious from the testimony of President and CEO of DISA Global Solutions, which facilitates Panasonic's drug and alcohol testing programs, as well as the testimony of the human

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[7] Tr. 76-80.

[8] Tr. 128; see also tr. 120.

[9] Initial Decision at 161-62.

resources manager for Panasonic, that "this certainly started out as a random test" when staff at Panasonic prepared the paperwork.[10]

The law judge concluded the sanction of revocation of respondent's mechanic certificate with A&P ratings was appropriate. He stated the evidence established respondent had refused the test, and that the drug and alcohol testing regulations treat refusal as the same as failing a drug or alcohol test.[11] As a result, the law judge affirmed revocation of respondent's A&P.

D. *Issue on Appeal*

On appeal, respondent mainly questions the appropriateness of the sanction of revocation. He acknowledges he did not consent to the drug test on his final day of employment at Panasonic. He contends, however, that he was no longer fulfilling safety-sensitive duties at Panasonic on October 8-9, 2015, because he did not intend to work his final shift. Respondent questions whether Panasonic's choice to order a drug test on October 8-9, when respondent's name actually appeared on a list dated October 1, was sufficiently random to be considered a random test under Panasonic's FAA-approved drug and alcohol testing program. Based on these contentions, respondent asserts revocation of his mechanic certificate with A&P rating is too harsh, because revocation is a "death sentence" and will cause irreparable damage to his career.[12]

2. *Decision*

On appeal, we review the law judge's decision *de novo*, as our precedent requires.[13]

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[10] Id. at 161.

[11] Id. at 163.

[12] Appeal Br. at 6.

[13] 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 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).

A. *Factual Findings*

We find unpersuasive respondent's argument that Panasonic's selection of him for testing was not random prior to his scheduled shift on October 8-9. Respondent did not establish DISA's selection of employees and the company's placement of his name on the list was somehow contrary to Panasonic's FAA-approved drug and alcohol testing program,[14] or was otherwise the product of a surreptitious motivation. He also does not argue that the timing of the chain of events, which included: (1) his email notice to supervisors at Panasonic on September 29, 2015 advising them of his resignation[15]; (2) DISA's provision of a list of names to Panasonic on October 1, 2015; and (3) Panasonic's instruction for him to appear for testing prior to his scheduled work shift on October 8-9 was somehow inconsistent with the approved testing program.

The human resources manager for Panasonic who testified at the hearing described the testing program and the steps the company takes once DISA provides the company with the names of selected individuals. The steps involve collecting paperwork, verifying the employment status of each selected employee, and determining to which base station manager the human resources department will send the paperwork.[16] The base station manager must then gather the paperwork and determine the next shift in which the employee will be available for testing. None of these steps, or the timeframe in which the steps occurred in this case, is contrary to Panasonic's drug and alcohol testing program.

Respondent does not contest the law judge's factual findings that he refused to take the

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[14] Exh. A-7 ("U.S. Department of Transportation (DOT) Federal Aviation Administration (FAA) Drug and Alcohol Testing Program for Panasonic Avionics Corporation," dated January 1, 1995).

[15] Appeal Br. at 2.

[16] Tr. 48-51.

drug test, nor does he challenge the law judge's credibility determinations. Respondent appeared for work on October 8, wearing his uniform and then drove a company vehicle to his work site after his supervisor, Mr. Obregon, had informed him that he needed to submit to a random drug and alcohol test. These circumstances, combined with the law judge's adverse credibility determination, sufficiently refute his argument that he was not planning on performing any safety-sensitive functions for his scheduled shift on October 8-9.

B. *Sanction*

The factual findings outlined above support the sanction of revocation. Respondent's refusal to submit to a drug test, just prior to his intended performance of safety-sensitive work on aircraft, establish he lacks the qualifications necessary to hold a mechanic certificate with A&P ratings. The Board's longstanding jurisprudence establishes revocation is the appropriate sanction for such refusals.[17]

Respondent's contentions that mitigating factors exist to reduce the sanction from revocation to suspension are meritless and, as the law judge indicated in his oral initial decision, they have no basis in our precedent. In general, the absence of prior violations is not a mitigating factor, because the Administrator and the Board expect a lack of a history of violations as the status quo.[18] In addition, we have previously held that a respondent's loss of prospective employment opportunities as a result of the revocation or suspension of his or her certificate does not constitute a basis for reducing the sanction.[19] Given such jurisprudence, combined with the

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[17] See, e.g., Administrator v. Heyl, NTSB Order No. 5420 at 20 (2008) (citing Administrator v. King, NTSB Order No. EA-4997 at 11 (2002); Administrator v. Pittman, NTSB Order No. EA-4678 at 5 (1998); Administrator v. Krumpter, NTSB Order No. EA-4724 (1998)).

[18] See Administrator v. Jones, NTSB Order No. EA-5647 at 22 (2013) (stating, "we view a violation-free history as status quo, rather than a mitigating circumstance").

[19] See generally Administrator v. Hamrick, NTSB Order No. EA-5282 at 7-8 (2007); see also Administrator v. D'Auray, NTSB Order No. EA-4824 at 4-5 (2000) (citing Administrator v.

overall importance of ensuring mechanics who perform safety-sensitive functions must maintain a strict adherence to drug and alcohol testing requirements, we find revocation is the appropriate sanction for respondent's refusal to submit to the drug test that was to occur on his final day of employment at Panasonic.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The law judge's initial decision is affirmed.

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT AND WEENER, Members of the Board, concurred in the above opinion and order.

(… continued)
Uridel, NTSB Order No. EA-4772 (1999); Administrator v. Van Ovost, NTSB Order No. EA-4681, n.9 (1998)).

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

ORAL INITIAL DECISION AND ORDER

IN THE MATTER OF:	
MICHAEL P. HUERTA, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION	
Complainant,	Docket No. SE-30162
v.	
JASON PINEDA,	
Respondent.	

Tuesday,
February 2, 2016

United States District Court
Central District of California
312 North Spring Street
Los Angeles, California 90012

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

BEFORE:

THE HONORABLE WILLIAM R. MULLINS,
Administrative Law Judge

APPEARANCES:

On Behalf of the Complainant:

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On Behalf of the Respondent:

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Thousand Oaks, California 91360
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ALSO PRESENT:

JASON PINEDA, Respondent

1 ORAL INITIAL DECISION AND ORDER

2 ADMIN. JUDGE MULLINS: All right. Let's go

3 back on the record at this time.

4 This has been a proceeding before the National

5 Transportation Safety Board held here in Los Angeles.

6 Today is the 2nd day of February, 2016.

7 And it was held under the provisions of Section

8 44709 of the Federal Aviation Act of 1958, as amended. On

9 the appeal of Jason Pineda, who I'll refer to as the

10 Respondent, from an Emergency Order of Revocation that has

11 revoked his mechanic's certificate with an airframe and

12 power plant rating.

13 The Order of Revocation was issued through the

14 Enforcement Division of the Federal Aviation

15 Administration in Washington, D.C. The matter has been

16 heard before me, William R. Mullins, I am an Administrative

17 Law Judge for the National Transportation Safety Board.

18 And as is required by Board Rules in emergency

19 cases, I will issue a bench decision at this time.

20 The matter came on for hearing pursuant to

21 notice that was given to the parties. The Administrator

22 was present throughout these proceedings and represented

23 by Mr. Charles Raley, Esquire, of the Enforcement

24 Division, Washington, D.C.

25 And the Respondent was present at all times and

1 represented by his counsel, Mr. Scott Williams, Esquire,
2 of the Los Angeles area.
3 The parties were afforded a full opportunity to
4 offer evidence, and to call, examine and cross examine
5 witnesses. In addition, the parties were afforded an
6 opportunity to make argument in support of their respective
7 positions.
8 DISCUSSION
9 I will not read verbatim into the record the
10 Emergency Order of Revocation. I will paraphrase.
11 And the first six paragraphs, which were all
12 admitted, state that Respondent held a Mechanic's
13 Certificate as alleged, and that at all times through these
14 proceedings, he was an employee of the Panasonic Avionics
15 Corporation. And he was employed to perform safety-
16 sensitive aircraft maintenance and preventative
17 maintenance duties.
18 At all times herein Panasonic was the holder of
19 a Repair Station Certificate and was so authorized to
20 conduct their operations.
21 Paragraph four, at all times Panasonic had
22 implemented a drug and alcohol testing program pursuant to
23 14 CFR Parts 120 and 49 CFR Part 40. And as an employee
24 of Panasonic, this is paragraph five, Respondent was a
25 covered employee.

1 And paragraph six, as a covered employee, he was
2 subject to their drug and alcohol testing program.
3 Paragraph seven, on about October 9, 2015,
4 Respondent was notified that he was selected for a random
5 drug test.
6 At the outset of the trial, now there's a
7 paragraph B there, and it was withdrawn, and I allowed the
8 withdrawal. But, I mention it now because there was a
9 signed notification, which is Exhibit A-1, and admitted
10 here today, that shows that he signed a notification to
11 report immediately for DOT random testing.
12 And the testimony was -- and the reason it was
13 withdrawn is that document, although he was given this
14 notice on the 9th, it was not signed until the 10th -- he
15 was asked to come back and he did. Or -- well, I think the
16 reason -- the supervisor came to his house. And he signed
17 it the next day.
18 There was a conflict in the testimony whether
19 he dated it October 9 or the supervisor asked him to. I
20 have found that it really is not -- didn't impact the
21 decision in this case at all.
22 But, on the 9th when he was advised of this test,
23 and it's paragraph (c) under -- subparagraph (c) under
24 paragraph seven of the complaint -- he did not report to
25 the testing site. And paragraph (d), he did not submit to

1 the random drug test.

2 And then paragraphs -- the rest of the Order

3 relates to the regulatory violations involving regulatory

4 schemes involving drug testing, failure to drug test,

5 random drug testing, and all of those things. And that's

6 included in the balance. But, because he failed to submit

7 to the test, the Administrator has issued this Emergency

8 Order of Revocation.

9 The Administrator had four witnesses. The

10 first witness was Mr. -- well, before calling the witness,

11 Exhibit A-1 was admitted, which I've already described to

12 you.

13 Exhibit A-2 was admitted, and it's an excerpt

14 from the Sanction Guidance Table for the Administrator.

15 Which is advis -- well, I don't know whether it's an

16 advisory circular -- it's 2153(b).

17 The first witness called was Mr. Jeff Boyles

18 from Houston, Texas. He's the CEO of Global Solutions.

19 And it was his company that managed the drug testing program

20 for Panasonic as approved -- that program was approved by

21 the FAA and DOT.

22 But, he managed that program. And he

23 introduced Exhibit A-3, which shows this random selection

24 that was made. And his testimony was, and his testimony

25 was uncontroverted, it's a quarterly list that -- of people

1 who have been randomly selected for this drug testing --
2 and he introduced it. And it, of course, has the
3 Respondent's name on it, and it was issued by his company
4 on or about the 1st of October, which, according to
5 Respondent's testimony, was about the same day he, by
6 email, advised that the 9th of October was going to be his
7 last day of employment.
8 The second witness called was Marla Hunter, and
9 she lives in Washington State, and is the Drug Program
10 Manager for Panasonic Avionics Corporation. And she
11 identified, and there was admitted, Exhibit A-4, which
12 shows the Respondent's employment classification as a
13 Maintenance Service Rep.
14 Exhibit A-5, which shows his job description,
15 which includes the safety-sensitive designation.
16 A-6, a work schedule for Respondent. A-7 was
17 the drug and alcohol testing program for Panasonic, which
18 was approved by the FAA.
19 Exhibit 8 was a Notice to Covered Employees,
20 which is their briefing they give to -- for new employees
21 on their drug and alcohol testing policy.
22 Exhibit A-9 was a certificate of completion
23 where Respondent had completed a class on this drug and
24 alcohol abuse, substance abuse in the workplace.
25 And Ms. Hunter also identified Exhibit A-11,

1 which is a list of all of the -- a complete list, I guess,
2 of Panasonic safety-sensitive employees -- a fairly
3 lengthy list.
4 Ms. Hunter's testimony was that as a manager of
5 the program, -- and first let me say, this had to be a really
6 unique situation for a person to be randomly selected on
7 the last day of his employment. And it's been the emphasis
8 here, certainly from the Respondent and his counsel, that
9 this somehow wasn't random because it was his last day.
10 But, Ms. Hunter talked about receiving this on
11 the 1st. It took her six days to get the package prepared.
12 She sent them out, probably overnight.
13 It was received in the LA area on the 7th. And
14 the testimony was -- and I'll get to his testimony -- and
15 then by the supervisor, that he received this packet then
16 on the 9th to administer the test.
17 Mr. -- the next witness was Mr. Obregon. He was
18 a Supervisor for Respondent. And he talked about
19 Respondent coming to work.
20 There was some testimony about whether he was
21 going to be late or not. But he arrived -- by Respondent's
22 own testimony -- he arrived on time. He was in uniform.
23 And Mr. Obregon, who had just been given this packet,
24 according to his testimony, advised Respondent that he was
25 -- had been randomly selected, and that he needed to go

1 immediately for this test.

2 And at that point, and this was uncontroverted

3 by Respondent, Respondent advised Mr. Obregon that he had

4 -- it was his last day. He'd had a beer before he came to

5 work.

6 And Mr. Obregon said, well, let me go call my

7 supervisor. And he stepped out. He testified that when

8 he came back, Respondent was gone.

9 He called him on the cell phone to see where he

10 was, and the Respondent was in a company vehicle. And he

11 told -- Mr. Obregon testified that Respondent told him over

12 the phone that he was in the company vehicle headed to LAX

13 to go to work.

14 Mr. Obregon said that when -- because of this

15 conversation they had about the beer and all of that, that

16 he simply forgot to have Respondent sign this document,

17 which apparently is not a required document, but it's a

18 document that says that he understands that he has been

19 randomly selected. So, he called Respondent the next day.

20 And Respondent -- there was some question about Respondent

21 wasn't home, could he come by, or how could he get him to

22 sign it?

23 And finally Respondent said "I'll -- just meet

24 me at my house." And the Supervisor drove to Respondent's

25 house, and Respondent signed the document the next day.

1 But, it is dated the 9th. He signed it on the
2 10th. And then the testimony of Respondent -- which I'll
3 get to in a minute -- but he said he was asked to back date
4 it. Mr. Obregon didn't testify to that. But, in any
5 event, it was signed the next day.
6 The fourth witness called by the Administrator
7 was Ms. Lacey Jones, who's with the Special Investigation
8 Branch with the FAA in Washington, and she identified, and
9 there was admitted, Exhibits 12, 13, 14, 15, and 16, which
10 were basically -- shows the Respondent's Airman
11 Certification.
12 Exhibits 13, 14, and 15 all relate to
13 Panasonic's ops specs, and their approval for the drug
14 testing program. And then Exhibit A-16 was a letter of
15 investigation that was sent to the Respondent. That
16 concluded the Administrator's case in chief.
17 And Respondent then was called. He identified
18 R-5, which shows that he had taken drug tests prior to this
19 date, and had passed them. And the relevance as suggested
20 by counsel is that it shows that he had taken the drug tests,
21 and he knew the serious nature of the drug test.
22 Mr. Pineda said that he was only coming to work
23 that day to turn in his uniform, although he was wearing
24 it. And then when he left, he said -- after he had been
25 advised of this drug test -- he said he was not going to

1 the airport to go to work, that he was in a company vehicle,
2 but he was simply going to a convenience store to pick up
3 some cigarettes.
4 That, sort of in a nutshell, is the testimony
5 I've heard today, but, some comments on credibility: first
6 of all, Mr. Boyles' credibility was not an issue at all
7 today, simply because no one questioned anything his
8 company did. They did generate this random drug test, this
9 list, and it was sent to Panasonic on October 1.
10 The second witness, Ms. Hunter, her testimony
11 was consistent. Certainly it was consistent with someone
12 who's probably never had this situation come up before, is
13 that someone had been random selected on the last day of
14 their employment.
15 Whether it was -- I think there would be a
16 different issue if the person had been fired that day and
17 they were random selected. It certainly would be a
18 different way that you'd look at whether or not it was a
19 random test.
20 But, it's pretty obvious from Mr. Boyles'
21 testimony and Ms. Hunter's testimony that this certainly
22 started out as a random test when it was -- these packets
23 were prepared.
24 She said she got it on the 1st. It took her
25 until the 6th, and she got these packets, sent them out

1 overnight to LA -- received in LA on the 7th. So the
2 randomness of the drug testing, if it's an issue, wouldn't
3 come up until after it was out of Ms. Hunter's hands and
4 in the hands of management in the LA area.
5 Mr. Obregon's testimony, it certainly was
6 consistent. He didn't, although it was suggested there
7 was some hostility between he and Respondent, Mr. Pineda,
8 he certainly didn't indicate any of that hostility in his
9 testimony. He simply stated -- in fact, I almost gathered
10 from his testimony that he was trying to help Mr. Pineda
11 -- he went to talk to his supervisor about it after Pineda
12 told him this is my last day; I had a beer, whatever.
13 And when he went out and then he came back, and
14 he said -- and he testified that he had advised Mr. Pineda
15 that it was a random test. He had to go do it that day.
16 And Mr. Pineda left.
17 Mr. Pineda's testimony, again, he -- first of
18 all he has a lot on the line here today and I certainly
19 appreciate that, but there were some inconsistencies in his
20 testimony. I mean, if he's going to work to turn in his
21 uniform, why would he be wearing it? That sort of didn't
22 make any sense. And if he was simply going -- if he wasn't
23 going to work, he was going to a convenience store to get
24 cigarettes, why would he have taken a company vehicle?
25 Particularly if it's his last day and he knows these other

1 issues were going on.

2 And finally, why make an issue of when he signed

3 this Exhibit A-1, when he knew that he had been advised on

4 the 9th that he had been randomly selected?

5 So, those are some inconsistences in Mr.

6 Pineda's testimony. But he did testify that he had given

7 his, by email, his notice that he was terminating his

8 employment that day, several days before.

9 That generally describes the witnesses. And I

10 want to share with you my findings of fact.

11 FINDINGS OF FACT AND CONCLUSIONS OF LAW

12 First, the day in question, October 9, 2015 was

13 the Respondent's last day of work at Panasonic and he had

14 so advised Panasonic several days before.

15 The second finding would be that Mr. Pineda

16 reported to work that day, on time and in uniform.

17 Third, I find as a finding of fact that the drug

18 test offered was random, and Respondent was so advised it

19 was a random drug test when he arrived at work on the 9th

20 of October.

21 Fourth, Respondent advised his supervisor he

22 had a beer before coming to work.

23 And five, after being advised of this random

24 drug test, Respondent left the testing facility without,

25 and did not return to take the test.

1 And the conclusions of law based on those
2 findings of fact -- first, that the test was random. The
3 refusal to take this test was, under the Regulation, the
4 same as failing the test. And, that the appropriate
5 sanction would be revocation.
6 ORDER
7 It is therefore Ordered that safety in air
8 commerce and safety in air transportation, and a
9 preponderance of the reliable and probative evidence
10 requires an affirmation of the Administrator's Emergency
11 Order of Revocation as issued. And it is so Ordered.
12 Signed by Administrative Judge William R.
13 Mullins.
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15 EDITED ON
16 February 10, 2016 William Mullins
17 Judge
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1 APPEAL RIGHTS

2 ADMIN. JUDGE MULLINS: Mr. Pineda, you have the
3 right to appeal this Order today. And you may do so by
4 filing your Notice of Appeal within two days. I think Mr.
5 Williams is probably aware -- yes. Just a minute, let me
6 go over it. And then you can come up.

7 You have to file your appeal within two days
8 with the Office of Administrative Law Judges, National
9 Transportation Safety Board, at Room 4704, 490 L'Enfant
10 Plaza East, S.W. Washington, D.C.

11 And that -- you perfect your appeal by filing
12 a brief in support of the appeal within five days after the
13 date on which the Notice of Appeal was filed.

14 The briefs will need to go to the same street
15 address, but to Room 6401, which is the Office of General
16 Counsel.

17 And as Mr. Williams is aware, these times for
18 appeal are critical. And if you miss any of those times,
19 the Board will dismiss your appeal as just simply being out
20 of time.

21 And Mr. Williams, I'd ask for you to come up and
22 I'll hand you a copy and it's got the addresses and phone
23 numbers and all of that if you have any question about it.

24 I certainly could provide a copy to the
25 Administrator, but you probably carry those around with

1 you.

2 Mr. Williams, do you have any question about the

3 decision? I know you don't like it. But, I just -- if you

4 have any questions.

5 MR. WILLIAMS: Without asking the Court to

6 disturb its findings of fact, how much consideration had

7 been given to the reasonableness of the sanction? Without

8 disturbing the findings of fact, how much reasonableness

9 had been given consideration to the reasonableness of the

10 sanction?

11 ADMIN. JUDGE MULLINS: I think that's a fair

12 question. I think as appropriately discussed by Mr. Raley,

13 this is an area, the drug and alcohol abuse program and the

14 testing that's done, is critical to safety in air commerce.

15 I don't think -- it's certainly the precedent that I have

16 to live within this area -- there was no -- once there's

17 that finding, there was no -- even -- consideration for

18 sanction other then revocation.

19 Do you have any questions, Mr. Raley?

20 MR. RALEY: No, Your Honor.

21 ADMIN. JUDGE MULLINS: It's been well tried,

22 gentlemen. Thank you. And we will be in recess.

23 (Whereupon, the above-entitled matter went off

24 the record at 1:52 p.m.)