

SERVED: March 29, 2016

NTSB Order No. EA-5775

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 29th day of March, 2016

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-30172RM
v.)	
)	
PATRICK THEO FREIWALD,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent, who proceeds *pro se*, appeals the oral initial decision on remand of Administrative Law Judge William R. Mullins, issued in this proceeding on March 25, 2016 (hereinafter, remand hearing).¹ By that decision, the law judge affirmed the Administrator’s

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

emergency order revoking respondent's mechanic certificate with airframe and powerplant (A&P) ratings and his inspection authorization. The law judge determined the Federal Aviation Administration (FAA) proved respondent violated 14 C.F.R. §§ 43.12(a)(1),² 43.13(a) and (b),³ and 43.15(a)⁴ when respondent performed improper maintenance and repairs on a Beechcraft Musketeer B-23 aircraft (hereinafter, N2338Q); made false entries in the aircraft's maintenance logbook; and certified N2338Q was airworthy following an annual inspection when the aircraft was not airworthy. We deny respondent's appeal.

a. *Factual and Procedural Background*

The factual background of this case is set forth in our March 22, 2016 Opinion and Order in Administrator v. Freiwald (hereinafter, Freiwald I).⁵ On January 27, 2016, the Administrator issued an emergency order revoking respondent's mechanic certificate with A&P ratings and inspection authorization. The order, which became the complaint in this case, alleged respondent performed deficient repair and/or alteration of N2338Q and returned the aircraft to service; that

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

³ Section 43.13(a) requires each person performing maintenance, alteration, or preventive maintenance on an aircraft to use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by the manufacturer, or other methods, techniques, and practices acceptable to the Administrator. Paragraph (b) of the section requires each person performing maintenance, alteration, or preventive maintenance on an aircraft to do the work in a manner and use materials of such a quality that the condition of the aircraft or part on which he or she works will be at least equal to its original or properly altered condition.

⁴ Section 43.15(a) provides each person performing an inspection required by part 91, 125, or 135 of this chapter, shall (1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements; and (2) If the inspection is one provided for in part 125, 135, or § 91.409(e) of title 14, Code of Federal Regulations, perform the inspection in accordance with the instructions and procedures set forth in the inspection program for the aircraft being inspected.

⁵ NTSB Order No. EA-5774 (2016).

respondent knowingly made false entries in the maintenance logbook attesting he performed the work; and that respondent knowingly made false certifications that he performed an annual inspection of N2338Q and that the aircraft was airworthy.⁶ The law judge conducted a hearing on February 24, 2016 and issued an oral initial decision where he determined the Administrator failed to prove the allegations in complaint sections I and III and affirmed the allegations in sections II, IV, V, VI, and VII.⁷ The law judge also affirmed the Administrator's sanction of revocation.⁸ Respondent appealed the law judge's decision and argued the law judge erred in giving weight to the Administrator's witness testimony and in making evidentiary determinations.

On March 22, 2016, the Board determined the law judge failed to make express credibility determinations and erred in excluding respondent's DVD evidence, and the Board remanded the case with the following instructions:

In light of the absence of express credibility determinations and our determination the law judge erred in excluding respondent's DVD evidence, we remand this case to the law judge with the instruction to make credibility determinations as to sections II, IV, V, VI, and VII of the complaint based explicitly on factual findings in the record and to reconvene the evidentiary hearing for the limited purpose of considering respondent's DVD evidence. The law judge shall provide the parties an opportunity to examine the witnesses concerning the DVD evidence, present evidence to rebut the DVD, and supplement closing arguments.⁹

⁶ The complaint set forth the allegations in seven sections numbered "I" through "VII" concerning: (I) repairs and/or alteration of the flight control skins; (II) removal and reinstallation of the fuel selector valve with new seals, O-rings, and lock rings; (III) battery installation; (IV) flight control cable adjustment and lubrication; (V) trim tab adjustment and lubrication; (VI) aircraft airworthiness and return to service; and (VII) annual inspection signoff. Complaint ¶¶ 5-53.

⁷ Feb. 24 Initial Decision at 245-50. Citations to the law judge's Initial Decisions are cited as "Feb. 24 Initial Decision" and "Mar. 25 Initial Decision."

⁸ Feb. 24 Initial Decision at 250.

⁹ Freiwald I *supra* note 5 at 11-12.

The law judge held the remand hearing on March 25, 2016 and, again, affirmed counts II, IV, V, VI and VII of the Administrator's Complaint. Respondent appealed the law judge's decision on remand.

b. *Law Judge's Order*

The law judge described the three videos respondent introduced into evidence and noted the content of the videos did not serve to support or rebut the allegations of the Administrator's complaint.¹⁰ The law judge stated the first video did not show the trim tab was functioning as respondent claimed it would; the second video showed the fuel selector valve being moved from left to right but did not show that new seals, an O-ring, and lock ring had been installed; and the last video showed "the yoke move a little bit" but did not show that the flight control cable was adjusted properly.¹¹ The law judge further stated that none of the videos showed respondent checking the underside of N2338Q for a fuel leak.¹²

In discussing section II of the complaint, the law judge summarized the testimony of the Administrator's witnesses, discussed their experience and background, and determined Messrs. Greenberger, Charlton, and Clary and Inspector Honig were "quite credible"¹³ stating there was nothing in the record to discredit the witnesses.¹⁴ The law judge noted Mr. Clary's "litigious" demeanor during cross-examination but stated the fact that Mr. Clary waited to disassemble the fuel selector valve in the presence of Inspector Honig "enhanced his

¹⁰ Mar. 25 Initial Decision at 285.

¹¹ *Id.* at 285-86.

¹² *Id.* at 286.

¹³ *Id.* at 290.

¹⁴ *Id.* at 288-90.

credibility.”¹⁵ In discussing section IV of the complaint concerning the flight control cables, the law judge summarized witness testimony and found the cables had not been adjusted.¹⁶ The law judge found credible Mr. Clary’s testimony that the trim tab had not been lubricated as alleged in section V of the complaint.¹⁷

With regard to respondent’s credibility, the law judge stated it was “subject to some issues.”¹⁸ In this regard, the law judge cited respondent’s self-interested motive and noncompliance with the Prehearing Order.¹⁹ The law judge further stated respondent’s maintenance logbook entry that he installed new seals, an O-ring, and lock ring in the fuel selector valve despite the Administrator’s photographs and the testimony of Inspector Honig and Mr. Clary that the work had not been done “destroys any credibility that this respondent might have.”²⁰

The law judge found the Administrator proved sections II, IV, and V of the complaint by a preponderance of the evidence.²¹ The law judge also found the Administrator proved section VI of the complaint alleging respondent returned N2338Q to service when it was not airworthy and section VII of the complaint alleging respondent intentionally falsified the annual inspection signoff.²² The law judge held the evidence and testimony established respondent intentionally

¹⁵ Id. at 289.

¹⁶ Id. at 292.

¹⁷ Id. at 293.

¹⁸ Id. at 290

¹⁹ Id.

²⁰ Id. at 291.

²¹ Id. at 293-94.

²² Id.

falsified his maintenance logbook entries under Hart v. McLucas, specifically citing sections II, VI and VII of the complaint.²³

c. Issues on Appeal

Respondent raises three issues on appeal. First, respondent argues the testimony of Inspector Honig and Messrs. Greenberger and Clary at the February 24 hearing was inconsistent and not credible. Respondent also contends the Administrator's photographs admitted into evidence at the February 24 hearing show the fuel selector valve was not completely disassembled; therefore, the Board should disregard the photographs and the testimony of Inspector Honig and Mr. Clary concerning the fuel selector valve. Lastly, respondent argues the law judge erred by not allowing testimony from respondent's witness during the remand hearing who would testify she observed no fuel leaks from the aircraft.

2. Decision

While we give deference to our law judge's rulings on certain issues, such as credibility determinations²⁴ or evidentiary rulings,²⁵ we review the case, as a whole, under *de novo* review.²⁶

a. Witness Testimony

With regard to the issue of intentional falsification, we long have adhered to a three-prong test. The Administrator must prove an airman: (1) made a false representation, (2) in

²³ 535 F.2d 516, 519 (9th Cir. 1976).

²⁴ Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), *aff'd sub nom.*, Porco v. Huerta, 472 Fed.Appx. 2 (D.C. Cir. 2012) (per curiam).

²⁵ Administrator v. Ledwell, NTSB Order No. EA-5582 (2011).

²⁶ 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).

reference to a material fact, and (3) with knowledge of the falsity of the fact.²⁷ In Administrator v. Dillmon,²⁸ after remand from the Court of Appeals for the District of Columbia Circuit,²⁹ we clarified our analysis of this three-prong test, to emphasize a law judge's credibility determinations occupy an important role in analyzing whether the Administrator has fulfilled the third prong of the test. Moreover, we defer to our law judge's credibility findings unless those findings are arbitrary and capricious.³⁰ In Administrator v. Porco, we also held the law judge's credibility determination should be based explicitly on factual findings in the record.³¹ We remanded this case for the law judge to make express credibility determinations as to sections II, IV, V, VI, and VII of the complaint. We find the law judge made clear, express credibility determinations concerning witness testimony about sections II, V, VI, and VII of the complaint. The law judge did not make an express credibility determination concerning section IV of the complaint, the flight control cable.

Turning to respondent's specific arguments, respondent contends the Administrator's witnesses made false statements and perjured themselves at the February 24 hearing and cites specific portions of the transcript to support his contentions.³² We have reviewed the cited passages of the transcript and find no inconsistency or contradiction in the testimony of Messrs. Greenberger and Charlton. Respondent correctly points out that Mr. Clary testified

²⁷ Hart v. McLucas, *supra* n 23 at 519 (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

²⁸ NTSB Order No. EA-5528 (2010).

²⁹ 588 F.3d 1085 (D.C. Cir. 2009).

³⁰ Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), *aff'd sub nom.*, Porco v. Huerta, 472 Fed.Appx. 2 (D.C. Cir. 2012) (per curiam).

³¹ Id. at 22, 28-29.

³² Mar. 25 Appeal Br. at 1-2, 7, 12. Respondent contends Messrs. Greenberger and Charlton witnesses gave contradictory testimony at pages 37, 38, and 64, and Inspector Honig and Mr. Clary contradicted one another at pages 77 and 199 of the Feb. 24 Transcript.

Inspector Honig took all of the photographs admitted into evidence while Inspector Honig testified Mr. Clary supplied exhibit A-14, one of several photographs of the fuel selector valve.³³ However, we reject respondent's argument that an inconsistent statement about who, as between Inspector Honig and Mr. Clary, took one of the many photographs the Administrator admitted into evidence renders the Administrator's witness testimony in this regard not credible. Respondent also questions the credibility of testimony by Inspector Honig and Mr. Clary concerning the fuel selector valve and argues they only removed the cover of the fuel selector valve rather than completely disassemble it. This argument is also without merit. Mr. Clary testified that he stopped disassembling the fuel selector valve after he removed the lock ring and observed that the seals, O-ring, and lock ring were not new; he did not testify he completely disassembled the fuel selector valve assembly.³⁴ In addition, the law judge determined that "it was clear from the pictures and ... from the testimony of Mr. Honig and Mr. Clary who tore it down in the presence of Mr. Honig that the work [on the fuel selector valve] had never been done."³⁵

b. *Evidentiary Determinations*

Respondent argues the law judge erred in excluding two photographs, still photos taken from respondent's video, purporting to be the belly of N2338Q. This argument fails. The law judge correctly stated the photographs were outside the scope of the remand hearing, which was limited to the DVD evidence.³⁶ The law judge also correctly noted that respondent could have introduced the photographs into evidence at the February 24 hearing and that to the extent that

³³ Feb. 24 Tr. 77, 199. Citations to the hearing transcripts are cited as "Feb. 24 Tr." and "Mar. 25 Tr."

³⁴ Feb. 24 Tr. 187-88.

³⁵ Mar. 25 Initial Decision at 291.

³⁶ Mar. 24 Tr. 268

the photographs were still shots taken from the DVD evidence, the law judge admitted the actual DVDs into evidence.³⁷

Respondent also argues the law judge erred by excluding testimony from an eyewitness at the remand hearing who appeared in the DVD and who would testify she did not observe N2338Q leaking fuel during the post maintenance ground run. We instructed the law judge to limit the scope of the evidence at the remand hearing to respondent's DVDs and witness testimony and/or rebuttal "concerning the DVD evidence."³⁸ While respondent's witness may have appeared in the DVD, respondent states the witness was to testify about her personal observations during the ground run.³⁹ This witness' testimony about her personal observations is outside the scope of our Remand Order. In Freiwald I, we rejected respondent's argument that he was unable to secure a subpoena for his witness to testify about her observations during the ground run due to the last minute reassignment of the presiding law judge; we held the absence of respondent's witness from the February 24 hearing was due to respondent's failure to comply with the February 18 Prehearing Order.⁴⁰ We reject respondent's attempt to expand the scope of the remand hearing and circumvent our prior ruling that his eyewitness testimony was not excluded improperly during the February 24 hearing. This argument is without merit.

In the case *sub judice*, we affirm the law judge's decision as to sections II, V, VI, and VII of the complaint, reverse the law judge's decision as to section IV, and, therefore, affirm the Administrator's emergency revocation of respondent's Mechanic Certificate with Airframe and Powerplant ratings and Inspection Authorization. Respondent's appeal is denied.

³⁷ Id.

³⁸ Freiwald I *supra* note 5 at 12.

³⁹ March 25 Appeal Br. at 2.

⁴⁰ Freiwald I *supra* note 5 at 10.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's decision as to sections II, V, VI, and VII of the Complaint is affirmed;
3. The law judge's decision as to section IV of the complaint is reversed; and
4. The Administrator's emergency revocation of respondent's Mechanic Certificate with Airframe and Powerplant ratings and Inspection Authorization is affirmed.

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

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

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MICHAEL P. HUERTA,           :
ADMINISTRATOR, FEDERAL      :
AVIATION ADMINISTRATION,    :
                             :
        Complainant,        :
                             : Docket No.
v.                            : SE-30172RM
                             :
PATRICK T. FREIWALD,        :
                             :
        Respondent.         :
-----X

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Office of Disability Adjudication and Review
Social Security Administration
Glenridge Building
Courtroom 6, Suite 300
3505 Lake Lynda Drive
Orlando, Florida 32817

Friday,
March 25, 2016

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

BEFORE:

WILLIAM R. MULLINS,
Administrative Law Judge

APPEARANCES:

On Behalf of the Complainant:

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Enforcement Division, Southwest Team
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On Behalf of the Respondent:

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1 ORAL DECISION AND ORDER

2 ADMIN. JUDGE MULLINS: We'll go back on the
3 record at this time.

4 This has been a hearing before the National
5 Transportation Safety Board here in Orlando.

6 The case was here on remand and so my
7 comments at this time will be fairly abbreviated and
8 consistent with the Board's order on remand.

9 Present here today was the Administrator
10 through counsel, Mr. Greg Lander with the Enforcement
11 Division, and the Respondent was here, Mr. Freiwald and
12 he presented the videotapes as required by the Board's
13 order on remand.

14 And let me say at the outset the Board
15 stated in its opinion that I had excluded the DVD
16 evidence as a matter of inconvenience.

17 And that has suggested to me a whole new
18 approach. I can assure you that in 45 years of being a
19 trial judge each of the parties present in the
20 courtroom is responsible for presenting their own
21 evidence.

22 And the suggestion that this DVD was
23 excluded as a matter of inconvenience simply defies
24 that precept that I've lived with all those years.

25 And I certainly will make sure that there is

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1 a comment to the effect in all of my pretrial orders
2 that each party is responsible for presenting their own
3 evidence, not the trial judge.

4 So we're back here today to see these videos
5 and there were three video clips that Mr. Freiwald
6 presented.

7 The first one is numbered on the video
8 135757 which Mr. Freiwald said shows that the trim tab
9 was working.

10 And all it shows was he's walking around. I
11 couldn't even see it move or anything about it. He
12 just said, and it was his testimony that he checked it.
13 I couldn't tell that from the video, but that's really
14 not the issue in this case and I'll go back to those
15 issues in a few moments.

16 The second video was numbered 143143 which
17 shows the engine -- you can hear the engine running.
18 The video was taken inside the aircraft and shows the
19 fuel selector valve being moved from left to right.

20 And apparently that was to show, somehow to
21 rebut the fact that the log book entry, the annual
22 entry says that certain parts were replaced in this
23 fuel selector valve.

24 The video doesn't do anything to support one
25 way or the other that allegation. It just shows the

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1 turning of it.

2 However, respondent did make a comment that
3 he and his wife were sitting in the aircraft when this
4 video was taken and there wasn't any fuel leaking. Why
5 would he be in the airplane if the fuel's leaking?

6 Well, if you're sitting in the aircraft how
7 would you see the fuel leaking? I mean, it's leaking
8 underneath.

9 And in that regard I also noted that the
10 aircraft was sitting in the grass as opposed to a
11 tarmac which would indicate fuel leakage a lot more
12 than if it's dripping down in the grass. And there's
13 nothing in the video that would suggest that the
14 respondent crawled under the aircraft to check those
15 sort of things.

16 And the third video which was numbered
17 144922 shows that the flight control was working.

18 I think I saw the yoke move a little bit and
19 that was about it. However, I'll say this. There was
20 never any testimony that the yoke wouldn't move, that
21 the flight control didn't work.

22 It was just that -- and I'll go back and
23 talk about that a little bit, but it was -- the
24 testimony of the witnesses was that it was so stiff
25 that the flight instructor would not take the airplane

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1 up. He said there was something wrong with it.

2 So, those are the videos that I came here
3 today. And now the Board has asked me to talk about
4 the testimony as to paragraphs roman number II, IV, V,
5 VI and VII of the emergency order of revocation.

6 First as to number II and it starts, and
7 that's at paragraph 18 of the order of revocation.
8 Your aircraft log book entry for this aircraft states
9 that you removed the fuel selector for operational
10 issues, reinstalled fuel selector with new seals, O-
11 rings, lock rings and no leaks, positive daytime, clean
12 shutoff the engine.

13 Mr. Greenberger who's the owner of the
14 aircraft testified that when he came out to get the
15 aircraft with Mr. Charlton that there was a leak. And
16 they took it over to the fuel pump, put some more fuel
17 in it -- or well, I guess they took it over to the fuel
18 pump, put fuel in it and then discovered this leak.

19 And I assume this leak they discovered over
20 at the fuel pump would have been on a tarmac and not on
21 grass.

22 The fuel selector valve teardown was done by
23 Mr. Clary in the presence of Mr. Honig, the FAA
24 inspector.

25 And he testified as did Mr. Clary testified

1 and Mr. Honig testified that the parts that were
2 alleged to have been replaced in this had not been
3 replaced at all, had been painted over. The data plate
4 and they were adamant that this work had not been done.

5 The testimony, and I'll talk about -- Mr.
6 Greenberger owned the airplane. And anybody that's
7 ever owned an airplane would have to feel for him
8 because he goes over to pick up his airplane, and he's
9 put up quite a bit of money for an annual, and the
10 flight instructor won't fly it because it's got some
11 problems.

12 He gets it checked over and he finds all
13 these other problems.

14 But his testimony, and he also talked about
15 his complaint that he filed with the FAA. This was all
16 done after all of this work supposedly was done.

17 But there wasn't anything to discredit his
18 testimony. There was some suggestion in Mr. Freiwald's
19 pleadings that there were some issues there, but he
20 never raised that in his case in chief, and I never
21 thought that it was my responsibility to ask about that
22 because I believed that he was responsible for
23 presenting his case in chief.

24 Mr. Charlton was just a flight instructor
25 and also an AMP who was out there that day to go fly

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1 the airplane and he said these controls were so stiff
2 that he wasn't going to fly the aircraft and he saw the
3 leak over there. But his testimony wasn't discredited.

4 Mr. Honig, the FAA inspector who testified
5 has extensive experience in south Florida and was in a
6 seaplane operation for a number of years down in the
7 Keys and in Key West. Very knowledgeable. And he's
8 been in aircraft maintenance all these years that he
9 testified to.

10 There was nothing to discredit his testimony
11 at all and I found him quite credible.

12 And then Mr. Clary although he was a bit
13 litigious on cross examination, he was very
14 knowledgeable. And I thought it was interesting that
15 his comment, and that certainly enhanced his
16 credibility when he said that when he saw this control
17 issue, and also the -- he had taken out this fuel
18 selector valve, he wasn't going to do anything until
19 Mr. Honig was there.

20 And with this control cable thing he got an
21 IA who tested the control cables because he felt like
22 he needed somebody there that knew how to adjust this.
23 And he readjusted that. And we'll talk about that in a
24 minute.

25 But in any event, all of the Administrator's

1 witnesses were quite credible.

2 Mr. Freiwald's credibility on the other hand
3 is really subject to some issues.

4 First of all, he has a lot to lose as a
5 result of this, you know, and that's always, and all
6 respondents come to these hearings with that issue
7 against them. And it's certainly an issue here.

8 And the first thing he did, he wouldn't
9 comply with the pretrial order. Even after a telephone
10 conference call with Judge Montano, and Judge Montano
11 was very specific about telling him what he needed to
12 do.

13 He didn't do it, and then tried to introduce
14 all of this that had not been provided to the
15 Administrator, including this document from England was
16 one about corrosion. And I'm not here today to talk
17 about corrosion or the battery.

18 The other document, he introduced a NASA
19 document to show compliance with a federal regulation
20 that he cited in the -- he cited the federal regulation
21 in his annual inspection entry.

22 But yet on argument he said, well, he was
23 consistent with a NASA report.

24 Well, that discredits his testimony. Why
25 doesn't he argue the regulation that he cited in the

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1 annual report entry in the log book? Didn't do that.

2 And probably the most critical thing about -
3 - for me in this case as to Mr. Freiwald's credibility,
4 he said that he tore down that fuel selector valve, and
5 he replaced the O-ring, and the seals, and the snap
6 ring.

7 And it was clear from the pictures, and it
8 was clear from the testimony of Mr. Honig and Mr. Clary
9 who tore it down in the presence of Mr. Honig that that
10 work had never been done.

11 And to put that entry in the log book and
12 those pictures just really destroys any credibility
13 that this respondent might have.

14 The -- I talked about the credibility of the
15 witnesses, and I talked about this fuel selector valve.

16 Subparagraph IV that the Board asked me to
17 talk about was he adjusted the flight controls.

18 Well, Mr. Greenberger and Mr. Charlton both
19 noticed this issue with the flight controls which you
20 couldn't see on a video. I mean, the controls work,
21 they just were so stiff that the flight instructor
22 wouldn't go up with him.

23 And then Mr. Clary with the assistance of an
24 IA checked the tension on that and it was 65 pounds
25 when it was supposed to be between 24 and 29 pounds.

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1 And this is the first thing that's happened
2 to this airplane. I mean, there hasn't been several
3 months go by between this annual inspection.

4 All of the -- first of all, Mr. Greenberger
5 testified that he came over on the 12th. I think it
6 was finished on the fourth. The entry was made on the
7 first. But he came over on the 12th is when they
8 discovered the fuel leak and the tension issue in the
9 control cables.

10 And they were the first ones to see this
11 airplane. And they had gone over to Mr. Freiwald's
12 work area to get the airplane. So, this is not
13 something about a lot of time has transpired between
14 this work and these discoveries. It was a short period
15 of time. In fact, I think Mr. Honig was out there
16 probably within about 32 or 33 days as I recall.

17 So, the flight controls in paragraph IV
18 obviously weren't adjusted. Sixty-five pounds is -- if
19 it had been 30 instead of 24 that might have been
20 something else. But this was twice, almost three times
21 as high as it should have been, this tension.

22 Then the trim tab. Mr. Clary talked about
23 that he got in there to check on it and it just --
24 there was no lubrication.

25 Now, if this had been lubed and the airplane

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1 hadn't been flown those services would have indicated
2 this lubrication.

3 And he also testified that there was a
4 cotter pin broken and also one cotter pin that was
5 missing.

6 And like I said, Mr. Clary didn't have if
7 you will a dog in this hunt. He was just asked to look
8 at this and these are the things he found. And I found
9 his credibility good.

10 And so there I'm satisfied that the
11 credibility of the witnesses and the testimony
12 presented would show that each of those allegations was
13 established by a preponderance of the evidence.

14 Finally, in paragraphs VI and VII,
15 subparagraphs VI and VII, the first paragraph VI states
16 that the aircraft was returned to service when it
17 wasn't airworthy.

18 Paragraph VII says that the return to
19 service was intentional falsification in that the
20 respondent knew that it wasn't airworthy because of all
21 these issues.

22 I agree. I think the evidence has
23 established that. Under Hart v. McLucas it has to be a
24 falsity and it has to be about a material fact.
25 Airworthiness is certainly material.

1 And it has to be done with intent on the
2 part of this respondent. And he is an IA, an AMPIA.
3 And to return an aircraft to service with these issues
4 is clearly the falsification contemplated in Hart v.
5 McLucas.

6 And then paragraph VII is a false entry in
7 the log book. And the only -- not the only, but the
8 fuel selector valve itself, the breakdown and it was
9 clear from the pictures and the testimony of Mr. Honig
10 and Mr. Clary that this work was never done.

11 And it was very specific in the log book
12 entry that there was new parts put in this fuel
13 selector valve, new seals, new O-ring, new snap ring.

14 And it was clear that wasn't done. And
15 that's clearly intentional falsification. It was a
16 material fact and it was false and the respondent knew
17 it was false because it hadn't been done and he said he
18 did it.

19 Therefore I find that my previous order of
20 the revocation of respondent's airman's certificate is
21 sustained.

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23

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William Mullins

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Judge

1 ADMIN. JUDGE MULLINS: Madam Court Reporter,
2 if you could put a signature block for my signature.
3 And that concludes these proceedings. You folks can
4 go.

5 Again, there was a very short fuse on
6 getting your briefs and your notice to the Board. That
7 needs to be done by close of business today.

8 MR. FREIWALD: Okay.

9 MR. LANDER: Thank you, Your Honor.

10 (Whereupon, the above-entitled matter went
11 off the record at 10:05 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: FAA v Patrick Freiwald

Docket No. SE-30172RM

Before: National Transportation Safety Board

Date: 03-25-16

Place: Orlando, FL

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
accurate record of the proceedings.

Letha Wheeler

Court Reporter