SERVED: June 20, 2016

NTSB Order No. EA-5782

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 20th day of June, 2016

MICHAEL P. HUERTA, Administrator, Federal Aviation Administration, Complainant, v. RODNEY M. BYRD Respondent.	)	Docket SE-30214

OPINION AND ORDER

1. *Background*

Respondent appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montaño, issued May 24, 2016.[1] By that decision, the law judge determined respondent violated 14 C.F.R. § 67.403(a)(1).[2] The law judge ordered revocation of respondent's

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

[2] The pertinent portion of section 67.403(a)(1) prohibits a person from making fraudulent or intentionally false statements on an application for a medical certificate.

airline transport pilot (ATP) certificate, flight engineer certificate, first-class airman medical certificate, and any other airman certificates which respondent might hold based upon the violation of § 67.403(a)(1) and in accordance with 14 C.F.R. § 67.403(b)[3] and § 67.403(c)(1).[4] We deny respondent's appeal.

a. *Facts*

1. Traffic Stop and Related Actions

Respondent was employed by American Airlines as an airline pilot for approximately 18 years and held ATP, flight engineer, and first-class airman medical certificates.[5] He was required to apply for a medical certificate every six months.[6] On January 10, 2015, Maryland State Police Trooper John Sollon stopped respondent on Interstate 83 in Baltimore, Maryland for speeding.[7] During the traffic stop, Trooper Sollon observed respondent's bloodshot eyes and smelled a strong odor of alcohol on respondent's breath, and respondent admitted to having had "a couple" beers.[8]

Consequently, Trooper Sollon administered a field sobriety test and asked respondent to submit to a breathalyzer test, which respondent declined.[9] Immediately following the field sobriety test, Trooper Sollon placed respondent under arrest for "driving, attempting to drive

---

[3] The pertinent portion of § 67.403(b) states that a violation of § 67.403(a)(1) is a basis for suspending or revoking all airman, ground instructor, and medical certificates and ratings held by that person.

[4] The pertinent portion of § 67.403(c)(1) states that an incorrect statement, upon which the Federal Aviation Administration relied, made in support of an application for a medical certificate may serve as the basis for suspending or revoking a medical certificate.

[5] Tr. 89; Complaint ¶1; Answer ¶1.

[6] Tr. 131.

[7] Tr. 89-90; Exh. A-1 at 2, 4.

[8] Tr. 90, Exh. A-1 at 4.

[9] Tr. 91-92, 103-04.

vehicle while under the influence of alcohol" based on respondent's performance of the field sobriety test, speeding, admission of having consumed alcohol, glassy and bloodshot eyes, and odor of alcohol.[10] Trooper Sollon searched respondent and placed him in the front passenger seat of the police car, secured respondent's vehicle on the shoulder of the Interstate, and transported respondent to the Maryland State Police Barracks for processing where respondent was photographed and advised of his right to refuse a breathalyzer test.[11]

At the Barracks, respondent declined the breathalyzer test a second time and explained to Trooper Sollon he had taken medication for a back injury.[12] Trooper Sollon asked respondent why he did not say on-scene he had a back injury and respondent replied he did not recall being asked.[13] After respondent signed documents related to his refusal of the breathalyzer test, Trooper Sollon drove respondent to his mother's home.

The Maryland State Police did not confiscate or suspend respondent's driver's license because it was not issued by the State of Maryland.[14] Respondent retrieved his vehicle from the shoulder of the Interstate the following day.[15] Trooper Sollon completed an Incident Report dated January 10, 2015 detailing the events surrounding respondent's traffic stop, field sobriety test, subsequent arrest and transport to the Barracks, and refusal of the breathalyzer test.[16]

---

[10] Exh. A-1 at 1, 4-7.

[11] Tr. 92, 105, 122; Exh. A-1 at 6-7.

[12] Exh. A-1 at 6.

[13] Id. at 7.

[14] Tr. 121.

[15] Tr. 122.

[16] Exh. A-1.

On May 19, 2015, respondent appeared in the District Court of Maryland to face the charge of driving or attempting to drive a vehicle while under the influence of alcohol (DUI).[17] He was acquitted of DUI and was convicted of the lesser charge of driving while impaired by alcohol (DWI).[18] Respondent appealed his conviction and the court granted respondent probation-before-judgment (PBJ) on July 16, 2015.[19] Under Maryland law, PBJ is not a conviction.[20]

Following respondent's court proceedings, the Motor Vehicle Administrations (MVA) of both Florida and Maryland committed a series of reporting errors that resulted in an erroneous DUI conviction being placed on respondent's Florida driving record and on the National Driver Registry.[21] With the assistance of counsel in Maryland and Florida, respondent and his counsel attempted for "several months" to have the erroneous DUI conviction removed from his Florida driving record and were successful in November 2015.[22]

2. Applications for a Medical Certificate and Subsequent Enforcement Action

Respondent applied for a first-class airman medical certificate on February 2, 2015, less than one month after his January 10 arrest and again, seven months later, on September 14, 2015.[23] In completing both applications, respondent checked the "no" box for question 18v of

---

[17] District Court of Maryland Case No. 3FW0DLN; Exh. A-16 at 2.

[18] Tr. 128-29; see also Md. Code Ann., Transp. § 21-902(b)(1).

[19] Tr. 39, 129; Exh. A-6 at 3.

[20] Md. Code Ann., Criminal Procedure, § 6-220.

[21] Exh. A-6 at 3; Exh. A-9 at 1.

[22] Exh. A-6 at 3; Exh. A-7.

[23] Exh. A-4 at 5-7, 12-14.

Federal Aviation Administration (FAA) Form 8500-8, Application For Medical Certificate and Student Pilot Certificate.[24] Question 18v inquires as to whether an airman has a:

> Medical History – HAVE YOU EVER IN YOUR LIFE… HAD ANY OF THE FOLLOWING? … History of (1) any arrest(s) and/or conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any arrest(s) and/or conviction(s) and/or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges, or which resulted in attendance at an educational or rehabilitation program.[25]

Respondent certified that all statements and answers he provided in the February 2 and September 14, 2015 applications were complete and true and agreed that his representations therein would form part of the basis for the FAA's issuance of any medical certificate.[26] The FAA issued medical certificates to respondent on February 3, 2015 and on September 15, 2015.[27]

The FAA received respondent's Florida driving record showing a DUI conviction and assigned Special Agent (SA) Cristina Johnson, FAA Security and Investigations Division, to initiate an investigation in October 2015.[28] SA Johnson sent respondent a letter of investigation (LOI) on or about October 27, 2015, informing respondent of the alleged violation under investigation, providing respondent the disclosures required by the Pilot's Bill of Rights,[29] and providing respondent an opportunity to reply to the LOI.[30] In a series of letters from respondent and his counsel dated November 3, November 5,

---

[24] Exh. A-4 at 5, 12.

[25] Id.

[26] Exh. A-4 at 5 (item 20), 12 (item 20).

[27] Exh. A-4 at 8, 16.

[28] Tr. 29; Exh. A-5 at 1.

[29] Pub. L. No. 112-153, 126 Stat. 1159, § 2(b) (2012).

[30] Exh. A-5 at 1.

and November 17, 2015, respondent explained to SA Johnson that he was not convicted of a DUI or DWI and that the Florida MVA erroneously placed the conviction on his driving record.[31] In addition, respondent provided SA Johnson a corrected copy of his Florida driving record showing the erroneous conviction had been removed.[32] Respondent did not address his January 10, 2015 arrest in any of the letters he or his counsel sent to SA Johnson in response to the LOI.[33]

On April 14, 2016, the Administrator issued an emergency order revoking respondent's ATP, flight engineer, and airman medical certificates and any and all other certificates respondent may have held.[34] The order found respondent violated 14 C.F.R. § 67.403(a)(1) by intentionally falsifying his answers to question 18v in the February and September 2015 applications and stated the violation is a basis for revoking all airman and medical certificates held by respondent.[35] In addition, the order noted that, alternatively, 14 C.F.R. § 67.403(c)(1) provides for revocation of respondent's airman medical certificate based on his incorrect statements in the medical certificate applications upon which FAA relied.[36]

b. *Procedural History*

Respondent appealed, *pro se*, the Administrator's emergency revocation order on April 24, 2016, and stated question "18(v) can be confusing in its interpretation overall regarding its wording" and his "misinterpretations or misunderstandings of section 18v were truly

---

[31] Tr. 36-40, 45-47, 50-52; Exhs. A-6, A-7, A-9.

[32] Exh. A-7 at 3-4.

[33] Tr. 40, 47, 52.

[34] Complaint at ¶ 3.

[35] Id. at ¶ 2-3.

[36] Id. at ¶ 3.

unintentional."[37] Respondent's counsel filed an additional notice of appeal of the emergency order on April 25, 2015. The law judge conducted a hearing on May 23 – 24, 2016. SA Johnson, the Administrator's sole witness, testified that during the course of her investigation, she reviewed respondent's February 2 and September 14 medical certificate applications, respondent's Maryland and Florida driving records, the January 10 Maryland State Police Incident Report, records of respondent's court proceedings from the District Court of Maryland, and respondent's responses to the LOI, and the law judge admitted the documents into evidence.[38] SA Johnson further testified that based on her investigation, she believed respondent violated the Federal Aviation Regulations because respondent had been arrested on January 10, 2015 but did not indicate that arrest in his February 2 or September 14, 2015 medical certificate applications.[39]

At the conclusion of SA Johnson's testimony, the Administrator rested and respondent moved for a directed verdict and dismissal of the complaint arguing the Administrator failed to meet the burden of proving respondent knowingly made false representations or that the representations were material.[40] The law judge denied respondent's motion by finding the Administrator provided circumstantial evidence, through SA Johnson's testimony and the documents admitted into evidence, to show respondent either intentionally made a false

---

[37] Letter from Rodney Marcel Byrd to the Office of Administrative Law Judges (April 22, 2016). While the letter was dated April 22, 2016, respondent did not ship the letter to the Office of Administrative Law Judges via FEDEX until April 24, 2016, and it was received on April 26, 2016.

[38] Tr. 28-56; Exhs. A-1, A-4, A-6, A-7, A-9, A-13, A-14, A-15, A-16. Exhibits A-1, A-4, A-13 and A-16 were admitted into evidence pursuant to Federal Rule of Evidence 902(11).

[39] Tr. 57.

[40] Tr. 74-79.

representation or made an incorrect representation in his medical certificate applications and that the Board's precedent establishes that every answer on a medical certificate application is material.[41]

Respondent presented his case and testified that he did not intentionally falsify his answers to question 18v in the February 2 and September 14 medical certificate applications.[42] Respondent explained that Trooper Sollon did not tell him he was under arrest and that respondent believed the events of January 10 to be a normal traffic stop followed by suspicion of DUI - not an arrest.[43] Respondent explained he did not think he had been arrested because he had a "pretty good, clear understanding of what an arrest looks like" based on having witnessed a friend being arrested at a Baltimore Ravens football game and having served as a witness in his friend's wrongful arrest lawsuit.[44] In addition, respondent testified that his 30 years of service in the Air Force and friends who are law enforcement officers informed his understanding of what would occur during an arrest; therefore he interpreted the events of January 10 to be nothing more than a traffic stop.[45] Respondent further testified that the first time he saw the Maryland State Police Incident Report showing he had been arrested was at the hearing before the law judge but that his counsel had previously read the report to him over the phone.[46]

At the conclusion of respondent's testimony, he made no further motions, and the parties proceeded to closing arguments.

c. *Law Judge's Oral Initial Decision*

---

[41] Tr. 82-86.

[42] Tr. 99-100, 115-16.

[43] Tr. 92-93, 98, 123, 125.

[44] Tr. 94.

[45] Tr. 97.

[46] Tr. 123-24.

The law judge determined the Administrator proved each of the three prongs of the Hart v. McLucas[47] test by a preponderance of the evidence.[48] In making this determination, the law judge discussed the evidence presented[49] and explained his assessment of the evidence in terms of the three elements of intentional falsification that must be shown.[50]

The law judge determined the Administrator established by a preponderance of the evidence that respondent was arrested on January 10, 2015, and did not report that arrest on his February and September 2015 medical certificate applications, thus establishing respondent made an incorrect statement and a false representation and satisfying the first prong of the Hart v. McLucas test.[51] The law judge based this finding on the Maryland State Police Incident Report and on respondent's February and September 2015 medical certificate applications.[52] The law judge accorded the Maryland State Police Incident Report documenting respondent's arrest the greater weight and explained Trooper Sollon had "nothing to lose" concerning the contents of the Incident Report.[53]

---

[47] 535 F.2d 516, 519 (9th Cir. 1976) (citing Pence v. United States, 316 U.S. 332, 338 (1942)).

[48] Initial Decision at 191.

[49] At the outset of his oral initial decision, the law judge correctly catalogued the exhibits he admitted into evidence during the hearing. Id. at 160. However, we note that during the law judge's summary of respondent's testimony, the law judge incorrectly stated the Administrator's exhibit A-17 had been admitted into evidence. Id. at 172. It appears that exhibit A-17 is the Maryland State Police document provided to respondent at the Barracks advising respondent of his right to refuse the breathalyzer test. Tr. 111-12. Our review of the transcript shows that while respondent identified portions of exhibit A-17 and answered questions about it, the Administrator did not move exhibit A-17 into evidence. Tr. 109-112, 120-21.

[50] Initial Decision at 161-91.

[51] Id. at 178-79.

[52] Id. at 179.

[53] Id. at 187-88.

The law judge further determined the Administrator established by a preponderance of the evidence that the false representations were material satisfying the second prong of the Hart v. McLucas test. The law judge based his determination upon the Board's precedent in this regard and based upon respondent's certification of item 20 of the medical certificate applications stating the answers therein would be considered part of the basis for any issuance of a medical certification.[54]

Concerning the third prong of the Hart v. McLucas test, the law judge determined the Administrator established by a preponderance of the evidence that respondent's false representation was made with knowledge of its falsity. The law judge's determination was based on his explicit credibility determinations, which were unfavorable to respondent. In this regard, the law judge found not credible respondent's testimony that he did not know he had been arrested on January 10 and that he did not consider the events of January 10 to constitute an arrest.[55] In this regard, the law judge cited respondent's self-interested motive to establish he was not aware he had been arrested on January 10 because respondent had "much to lose" and would likely have not been able to fly for American Airlines without a medical certificate.[56] The law judge also cited respondent's admission that Trooper Sollon did not allow him to leave the scene of the initial traffic stop, to drive his own vehicle to the Maryland State Police Barracks, or to retrieve his vehicle rather than leave it on the shoulder of the Interstate and found it not credible that respondent would not have questioned these events if he thought it was merely a traffic

---

[54] Id. at 179-81 (citing Administrator v. Manin, NTSB Order No. EA-4303 (1994); Administrator v. Swyderski, NTSB Order No. EA-4041 (1993); Administrator v. Krings, NTSB Order No. EA-3908 (1993)); Exh. A-4 at 5, 12.

[55] Initial Decision at 183-91.

[56] Id. 191.

stop.[57] The law judge also questioned respondent's testimony that he had a mugshot taken at the Barracks and thought it was part of a routine traffic stop.[58]

Additionally, the law judge identified inconsistencies between the Incident Report and respondent's testimony concerning when respondent informed Trooper Sollon about having taken medication for his back injury, and having accorded the Incident Report the greater weight, the law judge found respondent not credible in this regard.[59] The law judge also identified an inconsistency between respondent's statement in his initial appeal letter and his testimony at the hearing. In this regard, the law judge pointed out respondent stated in his initial appeal letter that question 18v was confusing; yet, at the hearing, respondent did not testify that question 18v confused him or that he misunderstood it.[60] The law judge also noted that, conversely, respondent's initial appeal made no mention of his belief that the events of January 10 did not constitute an arrest.[61] The law judge stated, "Clearly Mr. Byrd's defenses and assertions appear to be evolving from his initial appeal to this hearing…. This inconsistency only casts more doubt upon respondent's credibility."[62]

The law judge found not credible respondent's testimony that based on his knowledge of what constituted an arrest, he concluded he had not been arrested on January 10.[63] In this regard, the law judge noted respondent provided no corroboration to support his testimony he observed a

---

[57] Id. at 186.

[58] Id. at 187.

[59] Id. at 188.

[60] Id. at 190.

[61] Id.

[62] Id. at 191.

[63] Id. at 185.

friend's arrest and later served as a witness in the subsequent wrongful arrest lawsuit.[64] The law judge also stated respondent provided no testimony about what occurred during his 30 years of military service that informed his understanding of what constituted an arrest, nor did respondent testify that he witnessed an arrest during his military service.[65] Rather, the law judge noted, respondent testified he was not in the military police.[66] For these reasons, the law judge found not credible respondent's testimony that his knowledge of what constituted an arrest formed the basis of his belief that he was not arrested on January 10.[67]

The law judge found respondent's testimony that he had not seen the Incident Report until he viewed it on the witness stand at the hearing was not credible.[68] The law judge noted respondent had been involved in legal proceedings in Maryland state courts and in trying to correct his Maryland and Florida MVA driving records, and stated, "[I]t is hard for me to believe, and I do not believe, that the police report of the arrest did not come up during the state court proceedings or perhaps one of his attorneys would have shown it to him… ."[69] The law judge concluded, "I do not find Mr. Byrd's testimony that he believed he had not been arrested when he answered 'no' to question 18v on his February and September medical applications to be credible."

Having found the Administrator established each of the three prongs of the Hart v. McLucas test, the law judge affirmed the emergency order or revocation.[70]

---

[64] Id. at 184.
[65] Id. at 185.
[66] Id.
[67] Id. at 185.
[68] Id. at 188.
[69] Id. at 189
[70] Id. at 195-97.

c. *Issues on Appeal*

Respondent's sole contention on appeal is that the law judge erred in denying respondent's Motion for Directed Verdict and Dismissal that respondent made at the conclusion of the Administrator's case in chief.[71] Respondent argues the law judge erred in denying the motion because the Administrator failed to establish that respondent knew his response to question 18v on the two medical certificate applications were false and that respondent's answers to question 18v were material. Respondent does not appeal the law judge's factual findings, credibility determinations, evidentiary rulings, or the sanction imposed.

2. *Decision*

We will not review the law judge's denial of respondent's Motion for Directed Verdict and Involuntary Dismissal because respondent put on evidence to rebut the Administrator's charges after the law judge denied the motion. In Administrator v. Lindsay, we explained:

> At the close of the Administrator's case the respondent moved to dismiss, arguing that the Administrator had not established a *prima facie* case. The law judge disagreed and denied that motion. On appeal here the respondent challenges that determination. However, since respondent put on evidence in defense of the charges after the rejection of his motion to dismiss, we think he effectively waived his right to object to the law judge's ruling, for once the case is appealed to us, the issue becomes not the correctness of the law judge's view that the burden of going forward with evidence had shifted to the respondent, but, rather, the sufficiency of the evidence in the record, viewed as a whole.[72]

---

[71] Appeal Br. at 1 (stating the "Board should reverse Judge Montaño's decision denying Mr. Byrd's Motion for Directed Verdict and Involuntary Dismissal and grant judgment in favor of Mr. Byrd as a matter of law.").

[72] NTSB Order No. EA-4095 at 5 (1994), aff'd sub nom. Lindsay v. Nat'l Transp. Safety Board, 47 F.3d 1209, 1214 (D.C. Cir. 1995) ("The Board's decision strikes us as entirely correct. The rule it embodies has long governed appeals in the federal courts. A defendant waives an appeal of the denial of a directed verdict motion by putting on evidence.") (citing Bogk v. Gassert, 149 U.S. 17, 23 (1893)); see also U.S. v. Doyle, 468 F.2d 633, 635 (10th Cir. 1972) ("[T]he trial court declined to rule on the motion to dismiss when the Government rested or to render any judgment until the close of all the evidence. The defendants chose not to stand on their motion but offered their proof. In these circumstances the defendants may not claim error by the refusal of the trial court to grant the motion made when the Government rested."); A. & N. Club v. Great American

In the case *sub judice*, we decline to review the law judge's decision that the Administrator had presented a *prima facie* case to survive respondent's motion at the close of the Administrator's case in chief. Rather, we will review the sufficiency of the evidentiary record as a whole. This is consistent with our precedent post-Lindsay for the past 20 years.[73]

While we give deference to our law judge's rulings on certain issues, such as credibility determinations,[74] we review the case, as a whole, under *de novo* review.[75] With regard to the issue of intentional falsification of a medical certificate application, we long have adhered to a three-prong test. The Administrator must prove an airman: (1) made a false representation, (2) in

---

Insurance Co., 404 F.2d 100, 103 (6th Cir. 1968) ("It is well settled that if the motion is denied the moving party has the choice of either standing on his motion or to proceed with his case. If the motion is denied and the defendant decided to proceed with its case, it will have waived the initial motion and the right to appeal any error committed in its disposition.") (internal citations omitted).

[73] See Administrator v. Campbell and Jones, NTSB Order No. EA-5021 at 2 n. 3 (2003) ("The denial of a motion to dismiss is not a ruling we would entertain on appeal in the circumstances of this case."); Administrator v. McCauley, NTSB Order No. EA-4850 at 2 (2000) ("Since the respondent decided to go forward with his defense after the Administrator rested, we will not undertake to determine whether enough evidence had already been admitted to survive a motion to dismiss. Instead, we will only determine whether the evidence in the record as a whole supports the Administrator's order."); Administrator v. Todd, NTSB Order No. EA-4377 at 2 n. 5 (1995) ("[R]espondent waived his right to object to the law judge's denial of his motion to dismiss by going forward with his defense."), aff'd sub nom. Todd v. Nat'l Transp. Safety Board, 103 F.3d 140 (9th Cir. 1996) ("A defendant waives an appeal of the denial of a directed verdict motion by putting on evidence.").

[74] 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).

[75] 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.[76] Board jurisprudence permits the Administrator to rely on circumstantial evidence.[77]

In the case *sub judice*, we determine the Administrator established the Maryland State Police arrested respondent for "driving, attempting to drive vehicle while under the influence of alcohol" on January 10, 2015, yet respondent checked the "no" box for question 18v on both his February 3 and September 14, 2015 applications for a first-class airman medical certificate indicating he had no history of arrest(s) involving alcohol-related driving offenses.[78] In addition, the Board has repeatedly held that any entry on an application for a medical certificate is material because the FAA relies upon those entries in making a determination as to whether to issue or not issue the certificate.[79] Therefore, the Administrator has satisfied the first and second prongs of the Hart v. McLucas test.

Analysis of third prong of the Hart v. McLucas test depends on a credibility determination concerning whether respondent intended to falsify an answer on the medical certificate applications.[80] We defer to the credibility findings of our law judges in the absence of a showing such findings are arbitrary and capricious.[81] Here, there are a number of issues that

---

[76] Hart v. McLucas, 535 F.2d at 519.

[77] Administrator v. Dillmon, NTSB Order No. EA-5528 at 13 (2010); Administrator v. Aviance Int'l Inc., NTSB Order No. EA-3805 at 5 (1993); Administrator v. Beirne, NTSB Order No. EA-4035 at 3 (1993); see also Olsen v. NTSB, 14 F.3d 471, 475 (9th Cir. 1994); Erickson v. NTSB, 758 F.2d 285, 288 (8th Cir. 1985).

[78] Exh. A-1; Exh. A-4 at 5, 16.

[79] Administrator v. Reynolds, NTSB Order No. EA-5135 at 3 (2005) ("[A]n applicant's answer to all questions on the application are material.") (citing Administrator v. Manin, NTSB Order No. EA-4303 (1994); see also Administrator v. Bennett, NTSB Order No. EA-5258 (2006).

[80] Dillmon, NTSB Order No. EA-5528 at 11; Administrator v. Singleton, NTSB Order No. EA-5529 (2010) (stating a law judge must make credibility determinations in intentional falsification cases); see also Administrator v. Reynolds, NTSB Order No. EA-5641 at 8 (2012).

[81] Porco, NTSB Order No. EA-5591 at 13-20.

serve to cast doubt upon respondent's credibility. Respondent maintained he did not know he had been arrested when he completed the medical certificate applications on February 2 and September 14, 2015. Respondent testified repeatedly that he believed the events of January 10, 2015 to be what he termed "a normal traffic stop followed by suspicion of DUI," rather than an arrest.[82] While we are cognizant of the fact that respondent was not handcuffed, fingerprinted, or placed in a jail cell; we note that he was held on-scene after the field sobriety test, searched, placed in a police car, transported to the Barracks, and photographed.[83] It is illogical that respondent would have interpreted these events as a traffic stop, especially when he admitted he had been involved in other traffic stops where he was not transported to the police station and photographed.[84]

Assuming *arguendo* respondent actually believed on January 10 his arrest was nothing more than "a normal traffic stop," it is implausible that he did not later learn he had been arrested. While we acknowledge it is entirely possible that respondent did not have physical possession of the Incident Report, it strains credulity that the subject of respondent's arrest, which followed his field sobriety test, never came up in respondent and his counsel's preparation for the Maryland trial court proceedings, during the court proceedings, or during respondent's appeal of his conviction, by respondent's counsel, or by the court. In fact, respondent admitted his Maryland-based counsel read the Incident Report to respondent over the phone.[85] The Incident Report contains an entire section entitled "Pre-Arrest Screening" that describes respondent's performance of the field sobriety test and a separate section entitled "Arrest" that

---

[82] Tr. 92, 93, 123, 125.

[83] Tr. 98, 130, Exh. A-1.

[84] Tr. 133.

[85] Tr. 123.

describes the grounds for respondent's arrest, the time of the arrest, and a clear statement that Trooper Sollon arrested respondent, searched him, placed him in the police car, and transported him to the Barracks.[86] It further strains credulity that respondent's counsel would have skipped these portions of the Incident report when reading it to respondent over the phone. Given that respondent's Maryland state court proceedings ended in July 2015, it is reasonable to conclude the Incident Report was read to respondent at some point prior to him completing the September 2015 medical certificate application.

In addition, we note that Trooper Sollon indicated he asked respondent on-scene at the time of the field sobriety rest if respondent had injuries, a medical condition, or if he had taken any medication and respondent answered "no" but that respondent later informed Trooper Sollon at the Barracks he had taken medication for a back injury.[87] Yet, respondent testified he informed Trooper Sollon on-scene that he had taken medication for a back injury.[88] We agree with the law judge that Trooper Sollon would have no reason to fabricate the Incident Report, particularly on a fairly inconsequential detail such as this. We also agree with the law judge that respondent provided inconsistent reasons for not reporting the arrest, first stating in his appeal letter that he was confused by question 18v then testifying he did not think he had been arrested and making no mention during his testimony of having been confused.

These issues call into question the substance and entirety of respondent's testimony. Given the totality of the evidentiary record, we agree with the law judge's assessment of respondent's credibility. In the case *sub judice*, the law judge identified inconsistencies between the documentary evidence in the record and respondent's testimony, portions of respondent's

---

[86] Exh. A-1 at 4-7.

[87] Id. at 4, 7.

[88] Tr. 91-92, 107.

testimony that were uncorroborated, respondent's evolving defenses, and respondent's self-interested motive. On these bases, the law judge found not credible respondent's testimony he did not know he had been arrested when he answered question 18v on February 2 and September 14, 2015. Our review of the record does not support a finding that the law judge's credibility determinations were arbitrary and capricious.

We affirm the law judge's determination that the Administrator proved the alleged violations by a preponderance of reliable, probative, and credible evidence.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The law judge's decision affirming the Administrator's complaint and revocation of any and all airman certificates held by respondent, including ATP, flight engineer, and first-class airman medical certificates 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

```
--------------------------x
MICHAEL P. HUERTA,        :
  ADMINISTRATOR, FEDERAL  :
  AVIATION ADMINISTRATION :
                          :
          Complainant,    :
                          : Docket No.
     v.                   : SE-30214
                          :
RODNEY BYRD,              :
                          :
          Respondent.     :
--------------------------x
```

Claude Pepper Federal Building
U.S. Tax Court Courtroom
51 SW 1st Avenue
Miami, Florida

Tuesday,
May 24, 2016

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

BEFORE:

ALFONSO J. MONTAÑO
Administrative Law Judge

APPEARANCES:

On Behalf of the Complainant:

ROBERT B. DIXON, ESQ.
of: FAA Enforcement Division, Southern Team
1701 Columbia Avenue
5th Floor
College Park, MD 30337
(404) 305-5210
robert.dixon@faa.gov

On Behalf of the Respondent:

PAUL R. BORTH, ESQ
of: Barnett & Borth, LLC
800 Waukegan Road
Suite 200
Glenview, IL 60025
(847) 809-9520
prb@barnettlegal.com

1 ORAL INITIAL DECISION AND ORDER

2 ADMINISTRATIVE LAW JUDGE MONTAÑO: This has been
3 a proceeding under the provisions of 49 USC 44709, formerly
4 section 609 of the Federal Aviation Act and the provisions
5 of the rules of practice in air safety proceedings of the
6 National Transportation Safety Board and specifically, in
7 this case, the sections pertaining to the emergency
8 proceedings instituted by the Administrator of the Federal
9 Aviation Administration.

10 Respondent appealed the Administrator's
11 Emergency Order of Revocation dated April 14, 2016 which
12 was subsequently filed as the Complaint in this case on
13 April 25, 2015. The Administrator alleges that the
14 Respondent violated 14 CFR 67.403(a)(1) in that no person
15 may make or cause to be made a fraudulent or intentionally
16 false statement on any application for a medical
17 certificate or on a request for any authorization for
18 special issuance of a medical certificate or statement of
19 demonstrated ability under this part.

20 The Administrator maintains that, pursuant to
21 section 67.403(b) the commission of an act prohibited under
22 section 67.403(a)(1) is the basis for revoking all airman,
23 ground instructor, and medical certificates and ratings
24 held by that person. The Administrator also maintains in
25 the alternative that 67.403(c)(1) provides for suspension

1 or revocation of medical certificates on which an incorrect
2 statement was entered on an application for a medical
3 certificate upon which the FAA relied.
4 If it is determined that your statement, Mr.
5 Byrd's statement, in reference to paragraphs seven and
6 eight of the complaint, were not fraudulent or
7 intentionally false as alleged in paragraph 11, then your
8 incorrect statement referenced in paragraphs seven and
9 eight are still a basis for revocation of your airman
10 medical certificates. The Respondent filed an Answer to
11 the Complaint in this matter.
12 This matter was heard before me as the
13 Administrative Law Judge assigned. And as required by the
14 regulations relative to emergency cases, I am issuing an
15 oral initial decision on these proceedings.
16 Pursuant to notice, this matter came on for
17 trial on May 23rd and today is May 24th, 2016 in Miami,
18 Florida. The Administrator is represented by one of the
19 staff counsel, Robert B. Dixon, Esq., Federal Aviation
20 Administration Enforcement Division, Southern Team. The
21 Respondent is represented by Mr. Paul Borth, Esquire. The
22 parties were afforded a full opportunity to offer evidence,
23 to call, examine and cross-examine witnesses and make
24 arguments in support of their respective positions.
25 Mr. Byrd has been in the courtroom throughout

1 the hearing. I will not discuss all of the evidence in
2 detail. I have, however, considered all of the evidence,
3 both oral and documentary. That which I do not
4 specifically mention is viewed by me as being corroborative
5 or as not materially affecting the outcome of this
6 decision.
7 As to any agreements between the parties in
8 this case, in his Answer to the Administrator's Complaint,
9 the Respondent admitted the allegations in paragraph one.
10 However, the Respondent denied paragraphs two through 14
11 of the Administrator's Complaint. As the Respondent has
12 admitted paragraph one, those allegations or statements
13 are considered to be established for the purposes of this
14 decision. The Respondent did not set forth any
15 affirmative defenses in his Answer to the Complaint in this
16 matter.
17 As far as the exhibits are concerned in this
18 matter, the Administrator moved for the admission of
19 Exhibits A1, A4, A5, A6, A7, A9, A11, A13, A14, A15 and A16.
20 Those exhibits were admitted into evidence without
21 objection by the Respondent. Respondent did not move for
22 the admission of any exhibits, but instead relied upon the
23 Administrator's admitted exhibits in his questioning of
24 witnesses.
25 I will discuss the testimony in the case first,

1 and then discuss how I will apply that testimony to the
2 issues I have to decide in this case.
3 The Administrator presented the testimony of
4 Cristina Johnson. Ms. Johnson is a special agent with the
5 Security and Investigations Division of the FAA. Special
6 Agent Johnson is involved in the section that handles DUI
7 cases. She has been employed in that position for 14 years
8 and has investigated over 1,000 cases. She testified that
9 80 to 85 percent of those cases have involved falsification
10 on medical application forms.
11 She testified she conducted the investigation
12 of the Respondent in this case. The case was assigned to
13 her by her supervisor. She received a file with the airman
14 data relative to Mr. Byrd which indicated the types of
15 certificates held by the Respondent and the date of his last
16 medical application.
17 She testified that in the case file was a copy
18 of the Florida Department of Motor Vehicle records which
19 indicated a drunk driving arrest and conviction in the
20 state of Maryland. A copy of that record was admitted as
21 Administrator's Exhibit 14. Special Agent Johnson
22 testified that the page of the report indicated that that
23 report indicated the Respondent was arrested on January 10,
24 2015.
25 She identified Exhibit A3 which is Respondent's

1 September 14, 2015 application for a first class airman
2 medical certificate. She testified that the Respondent
3 answered no to question 18(v) which reads -- section 18
4 basically starts by stating, have you ever in your life,
5 and it goes on to discuss a number of things. 18(v) refers
6 to a history of (1) any arrest or arrests and/or conviction/
7 convictions involving driving while intoxicated, while
8 impaired by, or while under the influence of, alcohol or
9 a drug; or (2) a history of arrest or arrests and/or
10 conviction or convictions and/or administrative actions
11 involving an offense which resulted in the denial,
12 suspension, cancellation or revocation of your driving
13 privileges or which resulted in attendance in an
14 educational rehabilitation program.
15 She testified that the Respondent answered no
16 to question 18(v). Special Agent Johnson testified she
17 next sent a letter of investigation to the Respondent
18 notifying him he was under investigation for the
19 alcohol-related motor vehicle incident of January 10,
20 2015. She identified her letter of investigation as
21 Administrator's Exhibit A5.
22 She testified that she obtained copies of the
23 arrest record from the state of Maryland. That record is
24 Administrator's A1 which shows that the Respondent was
25 arrested for attempting to drive a vehicle under the

1 influence of alcohol.

2 Special Agent Johnson then testified she
3 received a response to her letter of investigation from the
4 Respondent dated November 3, 2015. Mr. Byrd stated in that
5 letter that he was previously found not guilty for a DUI
6 on May 19, 2015 and granted probation before judgment which
7 he referred to as PBJ.

8 He testified he hired legal counsel in both
9 Florida and Maryland to address the issue. And the
10 information about the conviction was incorrectly placed in
11 the NDR, which is the National Drivers Registry, and he had
12 been attempting to have that information corrected.

13 In that letter, Mr. Byrd states that it's his
14 understanding that he has to disclose any alcohol
15 conviction on medical form FAA 8500-8. He states
16 currently he did not have any alcohol-related convictions
17 in the State of Maryland from which this event occurred.
18 He indicated that the Maryland Statute 6-220 did not
19 require disclosure unless he was later convicted.

20 Mr. Byrd testified that, stated in that letter,
21 that that was the information his legal counsel and the
22 court proceedings had informed him of. He provided what
23 he called a "true test" court deposition for Special Agent
24 Johnson's review.

25 Special Agent Johnson testified that

1 Respondent's letter did not address the January 10, 2015
2 arrest. She testified that she then obtained a copy of the
3 Florida driving record which indicated that the
4 alcohol-related offense had been removed. This is
5 indicated in Administrator's Exhibit A15. She testified
6 she also obtained a copy of the statement of the State of
7 Maryland Department of Motor Vehicle records which
8 corroborated Mr. Byrd's response to the letter of
9 investigation.
10 Special Agent Johnson testified that she then
11 received a second response from Mr. Byrd in which he
12 provided a copy of his corrected updated driving record for
13 the state of Florida. She testified that in that letter
14 Mr. Byrd did not address the January 10, 2015 arrest.
15 Special Agent Johnson then testified she received a copy
16 of the Maryland driving record which was entered into
17 evidence at A13.
18 Special Agent Johnson testified that she then
19 received a letter from Mr. Byrd's attorney which is in
20 evidence at A9. His attorney discussed what he termed was
21 a very complex situation between two states concerning his
22 client which he described as mitigating circumstances.
23 Special Agent Johnson testified that the letter
24 from Mr. Byrd's attorney did not address the January 10,
25 2015 arrest in this case. She testified it was the arrest

1 that was not identified on the medical applications of
2 January and September 2015.
3 She stated in response to question 18(v) as to
4 whether he had been arrested, Mr. Byrd stated no on both
5 of those forms. Special Agent Johnson identified a blue
6 ribbon copy of Mr. Byrd's airman medical file. She
7 identified pages 5, 6 and 7 as the September 14, 2015 airman
8 medical application in which Mr. Byrd answered no to
9 question 18(v). She also testified pages 12 through 14 of
10 that exhibit of the blue ribbon file as constituting the
11 February 2, 2015 application for his first class medical
12 in which Mr. Byrd answered no to question 18(v).
13 Special Agent Johnson testified that, based on
14 her investigation, she believed that the Respondent had
15 violated the Federal Aviation Regulations. She testified
16 that the Respondent had been arrested and did not indicate
17 that arrest in his February 2, 2015 or September 14, 2015
18 applications for his first class medicals.
19 She testified she made a sanction recommenda-
20 tion using the sanction table admitted as exhibit A11. She
21 identified figure B-4-b on page 30 of the document as
22 requiring revocation of all airman and medical certifi-
23 cates as the appropriate sanction in this case. She stated
24 that that was her recommendation as to the appropriate
25 sanction in this case.

1 On cross-examination, Special Agent Johnson
2 testified that a letter of investigation to Mr. Byrd was
3 only to put Mr. Byrd on notice that he was under investiga-
4 tion. She testified that the letter of investigation did
5 not address the arrest.
6 She agreed that, when Mr. Byrd responded to the
7 letter of investigation, he waived his right not to respond
8 under the Pilots Bill of Rights. Special Agent Johnson
9 also agreed that Mr. Byrd did this three times in three
10 different documents he subsequently submitted to her.
11 Special Agent Johnson testified that she did not call Mr.
12 Byrd to find out what Mr. Byrd's take was as to whether or
13 not he was arrested on January 10, 2015.
14 Special Agent Johnson agreed that Mr. Byrd's
15 second letter indicated that there was no DUI conviction,
16 and that is at Exhibit A7. She testified that she did not
17 have the corrected DMV information on this case until
18 November of 2015.
19 Special Agent Johnson, on cross-examination,
20 agreed that the corrected record from the Maryland and
21 Florida DMV records did not mention the arrest of Mr. Byrd.
22 Special Agent Johnson testified that she did not call Mr.
23 Byrd again to ask him if he was arrested after she received
24 those documents indicating that the DUI conviction no
25 longer appeared on the Maryland and Florida DMV records.

1 She testified that she did not talk to Mr. Byrd's attorney
2 after receiving his November 17, 2015 letter.
3 Special Agent Johnson was asked on cross-
4 examination if she had any information that Mr. Byrd made
5 a fraudulent or intentional statement. She testified that
6 she had the evidence that he had been arrested and that he
7 had not indicated that arrest on his medical application
8 forms. She again testified that she did not talk to Mr.
9 Byrd or his attorney about the arrest.
10 In response to the question as to whether there
11 was anything -- any specific facts about where Mr. Byrd
12 admits or talks about his arrest -- she indicated that she
13 did not know. That concluded the Administrator's case.
14 Mr. Byrd, after a motion for judgment on the
15 pleadings, which is in the record in this case, presented
16 his case. Mr. Byrd testified on his own behalf.
17 He testified that he joined the Air Force in
18 1983 and was an enlisted man for 10 years and then became
19 an officer and a pilot. He was in the Reserves and the Air
20 National Guard after active duty and retired in 2013 with
21 30 years in the Air Force. He testified he currently flies
22 for American Airlines and has done so for the past 18 years.
23 Mr. Byrd testified that he was visiting his sick
24 mother in Maryland on January 10, 2015. He testified he
25 was driving and he noticed an officer in the median of the

1 highway. While the officer pulled out of the median, Mr.
2 Byrd testified he looked at his speedometer and realized
3 he was doing 80 miles an hour.
4 He testified the officer asked him if he had
5 been drinking. He testified he responded yes. He had a
6 couple of drinks. He testified he gave the response
7 because, I believe he said, I do not lie about certain
8 things. That was not clear.
9 Mr. Byrd testified he was administered a field
10 sobriety test. He testified it was very cold that morning
11 and he was tired. He testified he was in pain from his back
12 surgery. He thought he did well on the field sobriety
13 test, he testified, but the officer disagreed and asked him
14 to take a breathalyzer test.
15 Mr. Byrd testified he asked the officer if his
16 medications he was taking for his back surgery would affect
17 the results of the breathalyzer test. Mr. Byrd testified
18 that the officer told him that he did not know and he did
19 not have to take the breathalyzer test if he did not want
20 to. Mr. Byrd testified the officer told him he could
21 refuse the test, and he would have to be taken to the police
22 station and asked again if he refused to take the
23 breathalyzer test.
24 Mr. Byrd testified that he decided to take the
25 refusal option. Mr. Byrd testified that he again refused

1 to take the breathalyzer test at the police station once
2 he arrived there. He testified that the officer then told
3 him his license had not been suspended.
4 According to Mr. Byrd, the officer asked him if
5 anyone could come and pick him up at the station, and Mr.
6 Byrd stated he did not have anyone who could do that. Mr.
7 Byrd testified that, after that discussion, the officer
8 drove him to his mother's home.
9 Mr. Byrd testified that he believed that what
10 occurred on January 10, 2015 was just a normal traffic stop,
11 and he interpreted the event that way. When he filled out
12 his medical application form on February 3, 2015, that was
13 his thought process and his mental state. He testified he
14 did not believe he had been arrested. Again, he thought
15 that it was a normal traffic stop.
16 Mr. Byrd testified that his thought process and
17 mental state was the same when he filled out his September
18 14th medical application form, that he had not been
19 arrested and that what occurred on January 10, 2015 was,
20 again, a normal traffic stop. The only difference he
21 stated was he had an additional piece of paper with him when
22 he filled out that form on the September 14th medical
23 application form.
24 He testified that he did not have any paperwork
25 or information as to any arrest that was conducted in his

1 case. Mr. Byrd testified that he had a friend who was
2 arrested in Maryland at a Baltimore Ravens game. He said
3 he was a witness to the event and he testified in the
4 wrongful arrest case which subsequently transpired.
5 Mr. Byrd testified that an officer asked his
6 friend to leave the venue and apparently his friend did not
7 leave the area fast enough for the officer. Mr. Byrd's
8 friend was placed under arrest, handcuffed, put in the back
9 of a police cruiser and was taken to jail and was jailed
10 for 24 hours.
11 Mr. Byrd testified his January 10th traffic
12 stop was different from the arrest of his friend. He
13 testified he knows what an arrest looks like, based on what
14 he saw his friend go through and also based on his 30 years
15 of experience in the military.
16 Mr. Byrd testified he filled out the second
17 refusal paperwork information at the police station. He
18 also testified he was transported to the police station in
19 the front seat of the police car. When asked if the officer
20 told him he was under arrest, Mr. Byrd stated that the
21 officer did not tell him he was under arrest.
22 Mr. Byrd testified that the officer did not read
23 him his rights. He testified that he was not placed in
24 jail, but filled out paperwork at the officer's desk. Mr.
25 Byrd again testified he knew what an arrest looks like from

1 what occurred with his friend when his friend was arrested
2 at the Baltimore Ravens game.
3 Mr. Byrd testified he did not have any
4 additional knowledge relative to the arrest when he filled
5 out his medical application in September 2015. He filled
6 out that application with the same state of mind again and
7 mental processes as he did when he filled out the
8 application in January. As noted he did indicate he did
9 have one additional document when he filled out that
10 application in January.
11 He also testified that he had sent three letters
12 to the FAA and made himself available to talk to the FAA
13 and made his attorney available to talk to the FAA. But
14 he was never contacted by the FAA investigator. When
15 asked, when he filled out the January and September
16 applications for a first class medical certificate, he did
17 so with the intent to falsify, Mr. Byrd replied no.
18 On cross-examination, Mr. Byrd testified he
19 performed the field sobriety test. He testified that
20 after the field sobriety test, he could not leave or go
21 home. He testified that he left with the police officer
22 after the field sobriety test and his refusal to take the
23 breathalyzer test at the scene where he was pulled over.
24 Mr. Byrd testified his car was left on the
25 shoulder of the road when he was taken to the police station

1 with the officer in this case. He testified he was not
2 allowed to drive his car, but had to drive with the police
3 officer in the police cruiser.
4 When Mr. Byrd asked why, if the incident was a
5 simple traffic stop, why he was not allowed to go home, he
6 responded that a second refusal at the police station was
7 required. When asked, when he was done with the second
8 refusal paperwork, was he allowed to go back to his vehicle
9 and drive home, Mr. Byrd responded no. Mr. Byrd testified
10 he did not ask the police officer to be allowed to drive
11 his own vehicle home.
12 Mr. Byrd testified on cross-examination that he
13 told the officer about his back injury on the side of the
14 road when he was undergoing his field sobriety test and
15 before being asked to take the breathalyzer test. He
16 testified he was not aware whether or not that was part of
17 the police officer's report.
18 Mr. Byrd testified on cross-examination that
19 the whole reason for the refusal to test was because of his
20 concern how his back medication would affect the results
21 of the breathalyzer. Mr. Byrd testified that the only
22 paperwork that he was ever provided when he left the station
23 was the form identified and admitted into evidence as A17.
24 When asked if he had seen page two of the form at A17, Mr.
25 Byrd testified that he did not recall seeing that form.

1 He testified he was advised of his rights as
2 were noted on page three of A17. And those rights relate
3 to his refusal to take the breathalyzer test.
4 On cross-examination, he testified he was
5 notified of the DUI violation by mail, which he received
6 later. On redirect, he was asked if his driver's license
7 was returned to him after the incident and the Respondent
8 testified it was returned to him after he completed the
9 second refusal paperwork, and as he had previously
10 testified, the officer told him that his license had not
11 been suspended.
12 In response to my question, the Respondent
13 testified that he did sign the form at A17 which indicates
14 that his license was returned to him because it was an
15 out-of-state driver's license. It was a Florida driver's
16 license.
17 In response to my questions as to whether docu-
18 ments he had when he filled out the September application
19 form, he referred to documents he had brought up to the
20 witness stand which were not in evidence. His counsel
21 represented that the documents he was referring to, or Mr.
22 Byrd was referring to, were at A6, pages four and five,
23 which relate to the May not-guilty disposition of his DUI
24 charge.
25 I asked him about the police report at A1 in

1 which the officer wrote specifically, due to a number of
2 observations, and I quote, "due to a number of observations
3 I concluded Byrd was driving under the influence and unable
4 to operate a vehicle safely At approximately 0204, I
5 placed Byrd under arrest for driving while under the
6 influence of alcohol."
7 He goes on to say a preliminary search was
8 conducted of Byrd and that was conducted of Byrd on the
9 scene. Byrd was placed in the front passenger seat per
10 Department policy and was transported to the Maryland State
11 Police Golden Ring Barracks for processing. The report
12 indicates the vehicle was secured.
13 After reading that passage, I asked if his
14 vehicle had been secured meant that it had been left on the
15 shoulder of the road. Mr. Byrd indicated that it was left
16 there on the shoulder of the road, and he went back for it
17 the next day. He testified that the car was left on the
18 shoulder of a three-lane highway.
19 I asked him if the officer had falsified his
20 report when he indicated that he placed Mr. Byrd under
21 arrest. Mr. Byrd replied, rather incredulously, I do not
22 know why the officer would consider what happened an
23 arrest. Mr. Byrd again stated that he understood and he
24 believed that the whole incident was a normal traffic stop
25 for suspicion of DUI.

1 Mr. Byrd testified he did not see the police
2 report that is at A1 until he saw it today on the witness
3 stand. He testified he did not believe he had been
4 arrested, again, because of his understanding of what an
5 arrest looked like from his experience with what had
6 occurred with his friend and because of his 30 years'
7 experience in the military. He testified in response to
8 my question that he had not been an MP or military policeman
9 while he was in the military for the 30 years.
10 Mr. Byrd testified that he did receive a DUI
11 citation in the mail and that he was found guilty of the
12 charge initially, but that conviction was overturned on
13 appeal. There were no redirect questions based on my
14 questions.
15 On recross, the Administrator asked if a mug
16 shot had been taken of the Respondent at the police station
17 on January 10, 2015. The Respondent testified a picture
18 was taken of him front view with a digital camera. He
19 testified he did not think anything of it. When asked if
20 this picture was taken in any other situation when he was
21 involved in a routine traffic stop, Mr. Byrd testified he'd
22 never been involved in a routine traffic stop for suspicion
23 of DUI.
24 That completed the testimony of Mr. Byrd. I
25 will now discuss the testimony of both of these witnesses

1 as it relates to issues I must decide.

2 The Board adheres to a three-prong standard to
3 prove a falsification claim. The Administrator must prove
4 by a preponderance of reliable, probative and credible
5 evidence that: (1) a pilot made a false representation,
6 (2) in reference to a material fact, (3) with knowledge of
7 the falsity of that fact. This three-part test is derived
8 from the case of Hart v. McLucas, 535 F. 2nd, pages 516 and
9 519. This is a 9th Circuit case that was decided in 1976.

10 The Board has also held that a statement is
11 false concerning a material fact under the standard if the
12 alleged false fact could influence the Administrator's
13 decision concerning the certificate, or compliance with
14 the regulations. The Board has also held that this
15 three-prong test can be proven by circumstantial evidence.

16 Applying the facts and evidence in this case to
17 the three-prong standard, I will first discuss whether or
18 not there was a false representation in this case. The
19 Administrator presented the testimony of Special Agent
20 Johnson. She testified that she conducted an investiga-
21 tion of the Respondent's arrest. She sponsored Exhibit A1
22 which is a Maryland State Police Incident Report dated
23 1/10/2015 which documents the arrest of the Respondent on
24 that date.

25 Page four of the report includes a section that

1 is entitled Pre-Arrest Screening. Page four includes a
2 heading entitled Arrest. The last paragraph of page four
3 indicates that the police officer states again, due to a
4 number of observations I concluded Byrd was driving under
5 the influence and unable to operate a vehicle safely. At
6 approximately 0205, I placed Byrd under arrest for driving
7 while under the influence of alcohol. A preliminary
8 search was conducted of Byrd on the scene. Byrd was placed
9 in the front passenger seat, per Department policy, and was
10 transported to the Maryland State Police Golden Ring
11 Barracks for processing. His vehicle was secured.
12 The record also indicates, at 0240 hours, the
13 DR15 Advice of Rights was read to Byrd, and he was also
14 provided a copy to read over at which time he refused to
15 submit to the breath test. While at the Barracks, Byrd
16 stated that he had had a back injury. The report reads,
17 when asked why he did not state that when he was asked on
18 the road, Byrd stated he did not remember the police officer
19 asking him that question. I guess that question means he
20 had not asked him if he had had back surgery.
21 The last sentence of the report reads, "closed
22 by arrest." Special Agent Johnson testified that her
23 investigation disclosed that Mr. Byrd completed a medical
24 application for a first class medical on February 2, 2015
25 and September 15, 2015 in which he answered no to question

1 18(v). The two applications are in Exhibit A4.

2 Special Agent Johnson identified pages five,
3 six and seven as his September 14, 2015 airman medical.
4 She also identified pages 12 through 14 as the February 2015
5 application for his first class medical. Mr. Byrd
6 answered no in both of these applications as to question
7 18(v).

8 Respondent's counsel does not dispute that the
9 Maryland State Police report indicates that the Respondent
10 was arrested on January 10, 2015. Respondent's counsel
11 argues instead that Mr. Byrd did not interpret what
12 occurred at two o'clock in the morning on January 10, 2015
13 as an arrest.

14 Respondent does not dispute that he answered no
15 to question 18(v) on his February 3, 2015 and September 15,
16 2015 medical applications for his first class medical. He
17 argues that his interpretation as to what occurred on
18 January 10, 2015 was not an arrest.

19 I find that the Administrator has established
20 by a preponderance of the evidence that the Respondent was
21 arrested in the early morning of January 10, 2015. I
22 further find that the Administrator has established by a
23 preponderance of the evidence that the Respondent did not
24 report the arrest on his answer to question 18(v) in his
25 February and September 2015 applications for his first

1 class medical. Thus, I find that the evidence establishes
2 by a preponderance of evidence that the Respondent at a
3 minimum made an incorrect statement on his applications
4 when he answered no to question 18(v) in February 2 and
5 September 14, 2015 medical application forms.
6 I further find that the evidence establishes by
7 a preponderance of the evidence that the Respondent made
8 a false representation in his answer to question 18(v) in
9 his February 2 and September 14, 2015 medical applications.
10 The Maryland Police Report indicates he was
11 arrested. The Respondent indicated he was not arrested in
12 his medical application. That is a false statement. The
13 question as to whether the Respondent knew that statement
14 was false when he made it is a matter to be addressed in
15 a later step in this analysis.
16 The second issue I must determine is whether or
17 not this false representation is material. As noted, the
18 Board has held that a statement is false concerning a
19 material fact if the alleged fact could influence the
20 Administrator's decision to issue a medical certificate.
21 The Administrator argues that case precedent clearly
22 establishes that every single question in the medical
23 application form is material. The Administrator cites
24 Administrator v. Manin, NTSB Order EA-4303. That's a 1994
25 case.

1 I believe the Administrator. I also note that
2 in DeBlasio v. Crane, NTSB Order EA-3908, a 1993 case, the
3 Board found that even though the Administrator did not
4 present evidence as to the materiality of the DUI convic-
5 tions in that case, the Board stated, and I quote, "we think
6 materiality is established by virtue of the fact that the
7 information was specifically sought in a form used by the
8 Administrator to determine an applicant's qualifications
9 to hold a medical certificate."
10 The case of Hinson v. Swyderski, NTSB Order
11 EA-4041, cites this language as well, stating that despite
12 the fact that were traffic convictions in his records
13 respondent in that case did not report them in his medical
14 application form and the Board stated, and I quote, "can
15 there be any real dispute as to the materiality of the
16 information sought in the medical application form in this
17 case?" Swyderski cites DeBlasio v. Crane.
18 Section 20 of the medical application forms
19 that were filled out by Mr. Byrd in this matter read, "I
20 hereby certify that all statements and answers provided by
21 me on this application form are complete and true to the
22 best of my knowledge, and I agree that they are to be
23 considered part of the basis for any issuance of any medical
24 FAA certificate to me." Mr. Byrd signed the certificates
25 on both his January and September applications for his

1 first class medical certificate. Certainly, the aviation
2 medical examiner for the FAA would be influenced by
3 Respondent's false representation that he had no history
4 of arrest in making the determination that the Respondent
5 was entitled to receive a medical certificate.
6 Respondent does not argue that the answers to
7 question 18(v) or any other question on the medical
8 application form are not material. Respondent argues that
9 the Administrator did not provide a witness that testified
10 at hearing relative to materiality. Respondent maintains
11 that the Administrator has not met his burden, therefore,
12 to prove materiality because no one testified as to that
13 issue.
14 Clearly, the case law established that the
15 Board has decided a statement is false concerning a
16 material fact if the alleged fact could influence the
17 Administrator's decision. I cannot ignore the case law I
18 have just talked about when it is clear that the Respond-
19 ent's failure to report his arrest on January 10, 2015 is
20 a fact which would influence the Administrator's decision
21 as to whether to issue the first class medical certificates
22 in this case. That information as to the arrest on January
23 10, 2015 was not provided by Mr. Byrd. Therefore, the
24 Administrator could not consider that evidence in deciding
25 whether or not to issue the medical certificates, and

1 without that evidence or that information, the Admini-
2 strator issued the medical certificates in this case.
3 Based on the foregoing, I find that the
4 Administrator has established by a preponderance of
5 evidence that the falsification in this case is material
6 and that the failure to report an arrest would indeed
7 influence the Administrator's decision to issue the first
8 class medical certificates in this case.
9 I now turn to the last prong of the analysis:
10 Was the false representation made with knowledge of the
11 falsity of the fact at the time that Mr. Byrd filled out
12 the medical application forms in this case? In essence,
13 I have to decide the credibility as to whether the
14 Respondent made a false representation in his answer to
15 question 18(v) in his February and September 2015 medical
16 applications with knowledge of the falsity of that fact.
17 Essentially, that means I have to determine if at the time
18 he answered no to question 18(v), his answer was made with
19 knowledge of the falsity of that fact.
20 The Administrator argues the preponderance of
21 the evidence in this case establishes that the Respondent
22 was arrested on January 10, 2015 and he did not disclose
23 that arrest in his answer to question 18(v) on his applica-
24 tions for his first class medical certificates in this case
25 in February and September of 2015. The Administrator

1 argues that circumstantial evidence in this case estab-
2 lished that the Respondent made a false statement on his
3 medical applications with knowledge of the falsity of that
4 fact because he knew -- Mr. Byrd knew -- he had been arrested
5 on January 10, 2015. The Respondent maintains that he was
6 not arrested on January 10, 2015.
7 Respondent's counsel argues that the Admini-
8 strator must prove that Mr. Byrd intentionally falsified
9 his application forms, and there has to be some evidence
10 of this intent. Case law specifically states that that's
11 not a requirement that the Administrator must establish,
12 and that the falsification can be established through
13 circumstantial evidence.
14 The Respondent maintains in this case that he
15 was not arrested on January 10, 2015. Mr. Byrd testified
16 that, based on his experience gained in 30 years in the Air
17 Force and his experience relative to his friend's arrest
18 at a Baltimore Ravens game, he knows what an arrest looks
19 like. Based on this knowledge, he testified he concluded
20 that he was not arrested on January 10, 2015.
21 Mr. Byrd does not assert that he was confused
22 by question 18(v). Mr. Byrd does not assert that he was
23 advised by one of his three legal counsel representing him
24 relative to the events of January 10, 2015 that he was not
25 arrested. Mr. Byrd does not assert that he has relied on

1 some state statute that led him to conclude that he was not
2 arrested.
3 Mr. Byrd testified that what occurred at
4 approximately 2:00 a.m. on January 10, 2015 was not an
5 arrest because in his experience, it did not look like an
6 arrest to him. Mr. Byrd testified that he believed that
7 what occurred on January 10, 2015 was a normal traffic stop
8 and he interpreted the event that way.
9 He testified that when he filled out his medical
10 application form on February 3, 2015 this was his thought
11 process and his mental state. He did not believe he had
12 been arrested. Mr. Byrd testified that his thought
13 process and mental state was the same when he filled out
14 the September 14 medical application form. He testified
15 again that he did not believe that he had been arrested.
16 The only difference, he testified, was that he had an
17 additional piece of paper. His testimony at hearing
18 disclosed that the additional piece of paper did not relate
19 to the matter as to whether or not he had been arrested on
20 January 10, 2015.
21 Mr. Byrd has provided no corroborating evidence
22 as to the events he claimed occurred with his friend when
23 his friend was arrested at a Ravens football game that had
24 such a profound effect on his understanding, as he
25 testified, of what an arrest looks like. The testimony is

1 uncorroborated and certainly there's nothing in this
2 record to support that the incident occurred. And I cannot
3 find that testimony relative to that event to be credible.
4 Mr. Byrd testified that he was not in the
5 military police during his 30 years in Air Force. He
6 provided no testimony as to what occurred during those 30
7 years in the military that educated him as to what
8 constitutes an arrest or what an arrest looks like.
9 He did not testify that he had even witnessed
10 an arrest during his time in the Air Force as an enlisted
11 man and later as an officer and a pilot. I do not find his
12 testimony as to his knowledge or expertise relative to what
13 constituted as an arrest gained from his 30 years in the
14 military to be in any way supported by the evidence in this
15 case nor do I find it to be credible.
16 Respondent's counsel in his closing arguments
17 asked that I give the Respondent his due as to his
18 experience and understanding of what constitutes an
19 arrest. Respondent has not established that Respondent is
20 due any deference as to his knowledge as to what an arrest
21 looks like or what constitutes an arrest.
22 While Mr. Byrd testified on direct examination
23 that he made himself and his attorney available to Special
24 Agent Johnson to discuss any matter, he did not testify as
25 to what difference it would have made if she had contacted

1 him about the arrest. Clearly to this day, on the witness
2 stand, Mr. Byrd appears to believe he was not arrested on
3 January 10, 2015. So what impact would a call from Special
4 Agent Johnson have on his belief he had not been arrested?
5 On cross-examination, Mr. Byrd testified that
6 he performed the field sobriety test and after that field
7 sobriety test, he could not leave and could not go home.
8 He testified he left the scene of the stop with the police
9 officer in a police car and traveled to the police station
10 after the field sobriety test and his refusal to take the
11 breathalyzer test. He testified his car was left on the
12 shoulder of the road.
13 He testified he was not allowed to drive the car
14 but had to drive with the officer. When asked why, if the
15 incident was a simple traffic stop, he was not allowed to
16 go home, he responded that a second refusal at the police
17 station was required. When asked when he was done with the
18 second refusal paperwork why he was not allowed to go back
19 to his vehicle and drive it home, Respondent indicated that
20 he was not allowed to do so.
21 Mr. Byrd testified that he did not ask the
22 officer to drive his own vehicle home, but he did not say
23 why, if indeed the matter was just a routine traffic stop
24 he would not ask to drive his own vehicle and not leave it
25 on the side of a three-lane highway.

1 Mr. Byrd testified the police officer drove him
2 to his mother's home. Mr. Byrd did not think that was
3 unusual. Mr. Byrd testified he did not think it unusual
4 for his photograph or his mug shot to be taken at the police
5 station for what he termed to be a routine traffic stop.
6 I read to Mr. Byrd a paragraph in the police
7 report which indicated the officer stated he had placed Mr.
8 Byrd under arrest for driving under the influence of
9 alcohol. I asked if the officer had falsified his report,
10 if indeed Mr. Byrd had not been arrested and what occurred
11 was just a routine traffic stop.
12 Mr. Byrd testified, incredulously, he did not
13 understand why the officer would think that what happened
14 that night was an arrest. In weighing these two
15 conflicting versions of what occurred on January 10th, (1)
16 Mr. Byrd stating it was not an arrest and (2) the arresting
17 officer indicating that it was an arrest and that he placed
18 Mr. Byrd under arrest, I believe that what the officer
19 thought on January 10, 2015 was an arrest, because he is
20 a police officer, he arrested Mr. Byrd and he put that
21 arrest in the report.
22 I give the police report and the arresting
23 officer's version of what occurred on January 10th the
24 greater weight in this case. The officer has nothing to
25 lose as to what he puts into or does not put into an arrest

1 report.

2 I do not find Mr. Byrd's testimony to be

3 credible. His testimony as to when he informed the officer

4 about his back problems and reasons for the refusal of the

5 breathalyzer test are not supported by the police report.

6 In fact, Mr. Byrd's testimony under oath conflicts with the

7 police report entirely relative to that issue.

8 Mr. Byrd testified that he told the officer

9 before taking the breathalyzer test that he had had back

10 surgery and was concerned that his medication would affect

11 the breathalyzer. In fact, the police report indicates on

12 the last page that Mr. Byrd did not indicate he had back

13 problems until he was at the police station.

14 Again, I give the police report in this case the

15 greater weight. I find Mr. Byrd's testimony not to be

16 credible relative to that fact and it is inconsistent with

17 the report.

18 Mr. Byrd testified he has not seen the police

19 report until he viewed it yesterday on the witness stand.

20 Mr. Byrd has been involved in a trial at the state level

21 in which he was convicted of a DUI offense. That

22 conviction was later overturned on appeal.

23 Mr. Byrd has been involved in trying to correct

24 his DMV records in both the state of Maryland and the state

25 of Florida. He has employed three attorneys, he states,

1 to assist him in that endeavor.

2 Based on those facts, it is hard for me to
3 believe, and I do not believe, that the police report of
4 the arrest did not come up during the state proceedings or
5 perhaps one of his attorneys would have shown it to him
6 relative to the charges against him and relative to the
7 information that appeared in his driving records and his
8 trial relative to the DUI offense in Maryland. I do not
9 believe Mr. Byrd when he states that the first time he saw
10 the police report was on the witness stand yesterday when
11 he testified to that fact under oath. His testimony is not
12 credible. I do not find Mr. Byrd's testimony that he
13 believed he had not been arrested when he answered no to
14 question 18(v) on his February and September medical
15 applications to be credible.

16 I do not find Mr. Byrd to be confused nor can
17 I find he relied upon some representation by an attorney
18 or a state statute he may have read. I simply do not
19 believe Mr. Byrd's story.

20 I must note that in his appeal he filed on April
21 22, 2016 that he states in that appeal that, "due to
22 Maryland law, the arrest dated January 10, 2015 cannot be
23 expunged due to a guilty speeding citation attached to the
24 overall violation cited, though there was no outstanding
25 DUI conviction on my record. Additionally, the state of

1 Maryland does not expunge records as informed to me
2 recently by legal representation in the state of Maryland."
3 If Mr. Byrd had not seen the police report prior to
4 yesterday and he believed he was not convicted, it's
5 difficult to believe and to understand why he would want
6 to have that conviction that did not occur expunged.
7 In addition, Mr. Byrd states in that April 22,
8 2016 letter and I quote, "the FAA Form 8500-A (18(v)) can
9 be confusing in its interpretation overall regarding its
10 wording." Thus, it appears that as of April 22, 2015 Mr.
11 Byrd believed he was convicted, makes no mention of his
12 defense that he did not believe he was convicted when he
13 filed his medical application forms. He makes no mention
14 of his defense that he did not believe he was arrested when
15 he filed his appeal which would have been a good time to
16 raise that defense. Rather Mr. Byrd seems to make a
17 convoluted attempt to assert that question 18(v) can, and
18 I quote, "be confusing in its interpretation regarding its
19 wording."
20 Yet at hearing he testified he did not believe
21 he was convicted and makes no assertion that question 18(v)
22 is confusing. He did not state on the witness stand that
23 he was confused by 18(v), that he did not understand 18(v).
24 That simply was not his testimony and that's not part of
25 the record in this case as to the sworn testimony.

1 Clearly, Mr. Byrd's defenses and assertions
2 appear to be evolving from his initial appeal to this
3 hearing that's going to be concluding today. This
4 inconsistency only casts more doubt upon the Respondent's
5 credibility.
6 Mr. Byrd has much to lose and I understand that
7 if he was unable to obtain his first class medical
8 certificate on February 3, 2015, Mr. Byrd would likely not
9 have been able to fly for American Airlines. He would
10 likely not have been able to fly without his medical
11 certificate if he answered truthfully on his September 15,
12 2015 medical application. Clearly, Mr. Byrd had
13 motivation relative to his false statements in this case
14 and his, in my belief, misrepresentations in his medical
15 application forms that were filed in February and September
16 of 2015.
17 Based on the evidence before me, I find that the
18 Administrator has proven by preponderance of evidence that
19 at the time Mr. Byrd made the false statements relative to
20 question 18(v) in his February 3 and September 15, 2015
21 medical applications, he made those false statements with
22 the knowledge of the falsity of those facts. Therefore,
23 I find that the Administrator has proven each of the three
24 prongs of the Hart v. McLucas test in this case by a
25 preponderance of the evidence.

1 As to the affirmative defenses, while Respond-
2 ent did not plead any affirmative defenses in his Answer
3 to the Complaint in this case, I have addressed his defense
4 that he did not believe he was arrested on January 10, 2015
5 in my previous discussions. Again, I do not find that he
6 proved that defense by preponderance of the evidence.
7 As to findings of facts and conclusions of law,
8 I must make those findings of facts and conclusions of law
9 for the record in this case. In doing so, I will use the
10 Administrator's Complaint.
11 The Respondent has admitted paragraph one which
12 has been established for the purposes of this case. As to
13 paragraph two, on or about January 10, 2015 you were
14 arrested for attempting to drive a vehicle while under the
15 influence of alcohol by the Maryland State Police,
16 Pikesville, Maryland, I find that the Administrator has
17 proven that allegation by a preponderance of the evidence.
18 As to paragraph three, on or about February 2,
19 2015 you applied for a first class airman medical
20 certificate. I find that the Administrator's proven that
21 allegation by a preponderance of the evidence.
22 As to paragraph four, on or about February 3,
23 2015 you were issued a first class airman medical
24 certificate, I find that the Administrator has proven that
25 by a preponderance of the evidence. Clearly that is

1 established in the record in this case.

2 As to paragraph five, on or about September 14,
3 2015 you applied for a first class airman medical
4 certificate. I find that the Administrator has proven
5 that allegation by a preponderance of the evidence.

6 As to paragraph 6, on or about September 15,
7 2015 you were issued a first class airman medical
8 certificate. Again, the Administrator has proven that
9 allegation by a preponderance of the evidence.

10 As to paragraph seven, on your February 2, 2015
11 and September 14, 2015 airman medical certificate applica-
12 tions in response to Item 18(v), Medical History, have you
13 ever in your life been diagnosed with, had or do you
14 presently have any of the following? History of (1) any
15 arrest(s), and/or conviction(s), involving driving while
16 intoxicated, while impaired by or under the influence of
17 alcohol or a drug, or (2) history of arrest(s), and/or
18 conviction(s), and/or administrative action(s), involv-
19 ing an offense(s), which resulted in the denial, suspen-
20 sion, cancellation or revocation of driving privileges, or
21 which resulted in attendance at an educational or rehabili-
22 tation program. You answered no on each application. I
23 find that the Administrator again has proven that alleg-
24 ation in paragraph 7 by a preponderance of the evidence.

25 As to paragraph eight, on the above-referenced

1 airman medical certificate, you certified in item 20 of
2 each application that all statements and answers you
3 provided on the application were complete and true. The
4 Administrator has proven that allegation by a preponder-
5 ance of the evidence.
6 As to paragraph nine, you made the certifica-
7 tion when you knew your answers to Item 18(v) were false.
8 The Administrator has proven and I found that allegations
9 have been substantiated in this case.
10 As to paragraph 10, it has been substantiated
11 by a preponderance of the evidence. As to paragraph 10,
12 your certifications were fraudulent or intentionally
13 false. The Administrator has proven those allegations by
14 a preponderance of the evidence.
15 As to paragraph 11, your answer to item 18(v)
16 on your February 2, 2015 and September 14, 2015 airman
17 medical certificate applications were fraudulent and
18 intentionally false, I find that the Administrator has
19 proven that allegation by a preponderance of the evidence.
20 As to paragraph 12, the FAA relied upon your
21 answers to 18(v) on the above-referenced airman medical
22 certificate applications to determine whether you were
23 qualified to hold a medical certificate, I find that the
24 Administrator has proven that allegation by a preponder-
25 ance of the evidence.

1 As to paragraph 13, your answer to item 18(v)
2 on your February 2, 2015 and September 14, 2015 airman
3 medical certificate applications were material in that an
4 airman medical certificate was issued to you without
5 consideration of the fact described in paragraph two on
6 each occasion. I find that the Administrator has proven
7 that allegation by a preponderance of the evidence.
8 As to paragraph 14, it is basically a statement
9 about the case of Administrator v. Berry. And it's
10 basically a statement of the case law and there's not an
11 allegation.
12 Having found that the Administrator has proven
13 the alleged violations of the Federal Aviation Regulations
14 in this case by a preponderance of reliable, probative and
15 credible evidence, I will now turn to the sanction imposed
16 by the Administrator in this case. In addressing the issue
17 of sanction in this case, I must note that on August 3, 2012
18 Public Law 112-153 known as the Pilot's Bill of Rights was
19 signed into law by the President of the United States and
20 became effective immediately.
21 The Pilot's Bill of Rights specifically strikes
22 certain language from 49 USC 44709 relative to the fact
23 that, in cases involving airman certificate denials, the
24 Board is bound by all validly adopted interpretations of
25 law and regulations the Administrator carries out unless

1 the Board finds the interpretation is arbitrary, capri-
2 cious or otherwise not in accordance with law.
3 The Pilot's Bill of Rights also strikes from 49
4 USC 44709 and 44710 language that, in cases involving
5 amendments, modifications, suspensions or revocations of
6 airman certificates, the Board is bound by all validly
7 adopted interpretations of law and regulations the
8 Administrator carries out and of the written policy
9 guidance available to the public relating to sanctions to
10 be imposed under the section unless the Board finds an
11 interpretation is arbitrary, capricious and not in
12 accordance with the law. What that means is that language
13 has been stricken from the law and I'm no longer bound by
14 law to give deference to the FAA.
15 The agency is, however, entitled to the same
16 judicial deference due all other federal administrative
17 agencies under the Supreme Court decision of Martin v.
18 Occupational Safety and Health Review Commission, et al.
19 499 US 144, 111 S.Ct. 171. That's a 1991 case.
20 In applying the principle of judicial deference
21 to the interpretation of laws, regulations and policies
22 that the FAA Administrator carries out, I must analyze and
23 weigh facts and circumstances in each case to determine if
24 a sanction selected by the Administrator is appropriate.
25 In this case, the Administrator has moved into evidence the

1 sanction guidelines and argues that revocation is the
2 appropriate remedy.
3 Special Agent Johnson testified that, based on
4 her investigation, she determined that there had been a
5 violation of the Federal Aviation Regulations and recom-
6 mended that sanction of revocation as set forth in B-4-b
7 at page 30 of Exhibit 11. The Administrator argues that
8 deference should be shown to the Administrator's choice of
9 sanction.
10 The Respondent does not argue that there are any
11 mitigating factors I should consider in determining the
12 appropriate sanction in this case. Respondent argues I
13 should find for the Respondent. I have found otherwise.
14 Board precedent firmly established that even
15 one intentional falsification compels the conclusion that
16 the falsifier lacks the necessary care, judgment, and
17 responsibility required to hold any airman certificate.
18 That is at Administrator v. Berry, NTSB Order EA-2689 and
19 that decision was issued in 1988.
20 I find that the sanction sought by the Admini-
21 strator is appropriate and warranted in the public interest
22 in air commerce and air safety. Therefore, I find that the
23 emergency order of the Complaint herein must be affirmed
24 as issued.
25

ORDER

It is ordered that (1) the emergency order of revocation, the Complaint herein, be and is hereby affirmed as issued; (2) any and all airman certificates held by the Respondent including his airline transport pilot certificate number 003417644 and his flight engineer certificate number 003417644 and any and all airman medical certificates held by Respondent including his first class airman medical certificates issued on February 3, 2015 and September 15, 2015 are revoked. This order is entered on this 24th day of May in Miami, Florida.

EDITED ON

June 1, 2016

ALFONSO MONTAÑO

Chief Administrative Law Judge