

SERVED: July 11, 2016

NTSB Order No. EA -5784

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 11th day of July, 2016

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-30107
v.)	
)	
VAUGHN S. LANE,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals, *pro se*, from Administrative Law Judge William R. Mullins’s oral initial decision issued on December 8, 2015.¹ The law judge affirmed the Administrator of the Federal Aviation Administration’s (FAA) order of suspension that alleged that respondent

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

operated his aircraft carelessly or recklessly under 14 C.F.R. § 91.13(a).² The law judge also affirmed the Administrator's 60-day suspension sanction.

A. *Facts & Procedural History*

On October 22, 2014, respondent operated as pilot in command of a Piper PA-24 (N8608P) on a flight in the vicinity of Louisiana Regional Airport (L38) in Gonzales, Louisiana, and landed on runway 17/35.³ When respondent landed, runway 17/35 was closed for construction on the taxiway.⁴ Janet Gonzales, the manager of L38, had issued a Notice to Airmen (NOTAM) to indicate that the runway was closed.⁵ In addition, the construction crew had placed two large yellow X's over the runway numbers and had placed low-profile barricades on the runway to indicate that the runway was closed.⁶ Respondent received the NOTAM, observed the yellow X's, and was aware runway 17/35 was closed when he landed.⁷ Respondent did not land due to an emergency, and did not request or receive permission to land on the closed runway.⁸

Mr. John Pat Oubre, who was inspecting the construction project, observed respondent make a "low pass, circle around, [and] head to the west" before landing.⁹ He did not suspect that respondent was going to land based on the low pass.¹⁰ As respondent's plane landed, Mr. Oubre

² Section 91.13(a) provides: "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³ Exh. A-1. The Complaint and the Administrator's Reply Brief state that respondent operated N8608P. Exh. A-1, introduced by the Administrator, states that respondent operated N9608P. The difference is immaterial, and we need not resolve the typographical error.

⁴ Exh. A-1; Tr. 14.

⁵ Exh. A-1; Tr. 13.

⁶ Exh. A-1; Tr. 24-26.

⁷ Tr. 69-70, 74, 93.

⁸ *Id.* at 48.

⁹ *Id.* at 24, 32.

¹⁰ *Id.* at 30-34.

ordered his crew to evacuate the runway.¹¹ He was at least 1,100 feet away from respondent's plane when it landed.¹²

Ms. Gonzales reported to the Federal Aviation Administration that respondent landed at L38 on a closed runway.¹³ Ms. Lisa Cotham, an Aviation Safety Technician at the Baton Rouge Flight Standards District Office, initiated an investigation into the unauthorized landing.¹⁴ When an "enforcement was probably in order," she turned the case over to an inspector.¹⁵

On August 21, 2015, the Administrator issued an order suspending respondent's commercial pilot certificate for 60 days, alleging that respondent violated § 91.13(a) by knowingly landing on closed runway 17/35.¹⁶ On August 26, 2015, respondent filed a Notice of Appeal, and on September 8, 2015, the Administrator refiled the order as the Complaint in this proceeding.

At the hearing before the law judge, respondent represented himself and testified.¹⁷ He argued that "operations can occur on closed runways. All according to what the pilot thinks the risk is."¹⁸ Similarly, he contended, "[t]here was no operation of this airplane contrary [to] a NOTAM. I challenge the Administrator to show me the NOTAM where it says this NOTAM says no landing on this runway. It does not say that at all."¹⁹ He also argued that he did not

¹¹ Id. at 27–28.

¹² Id. at 30–31.

¹³ Exh. A-1; Tr. 16.

¹⁴ Exh. A-4; Tr. 39–40.

¹⁵ Tr. 51.

¹⁶ Compl. ¶¶ 4–8.

¹⁷ Tr. 60.

¹⁸ Id. at 68.

¹⁹ Id. at 69.

violate § 91.13(a) because the construction crew was not in danger when he landed no closer than 1,100 feet from the crew.²⁰ We will address additional facts in the analysis of each issue.

B. *Law Judge's Oral Initial Decision*

The law judge found that there was no material issues about any of the Administrator's witnesses' credibility.²¹ The law judge explained that whether respondent violated § 91.13(a) depended on whether (1) the runway was closed; and (2) respondent knew that the runway was closed when he landed.²² He found that, because respondent admitted to knowingly landing on the closed runway, he was careless or reckless, in violation of § 91.13(a).²³ Additionally, the law judge concluded that the Administrator's 60-day suspension sanction was consistent with the sanction guidance tables that were admitted into evidence.²⁴

C. *Respondent's Issues on Appeal*

Respondent filed a timely Notice of Appeal on December 15, 2015. We have liberally construed respondent's *pro se* brief, and have rephrased and reordered the issues as:

1. Whether the evidence was sufficient to establish a violation of § 91.13(a)?
2. Whether Board precedent holding that landing on a closed runway is a careless operation was modified by the Pilot's Bill of Rights?
3. Whether the law judge abused his discretion in refusing to define "careless and reckless" during respondent's testimony?
4. Whether the law judge abused his discretion in limiting respondent's cross-examination of Ms. Cotham?

²⁰ *Id.* at 84–85.

²¹ Initial Decision at 109.

²² *Id.*

²³ *Id.* at 109–10.

²⁴ *Id.* at 110.

5. Whether the law judge abused his discretion in refusing to permit respondent to call Mr. Cade Miller, the Administrator's attorney in this proceeding, as a witness?
6. Whether the law judge abused his discretion in limiting respondent's recitation of his flight qualifications and experience?

Respondent requests oral argument and a hearing before us to present additional evidence, which he has appended to his brief.²⁵

2. *Decision*

- A. *We decline to grant oral argument and will not consider additional evidence appended to respondent's brief.*

We do not permit oral argument unless we find that it is necessary.²⁶ The essence of respondent's contention is that he did not operate his aircraft carelessly or recklessly. We conclude that oral argument is unnecessary because none of respondent's contentions detract from his admission to knowingly landing on a closed runway, which, in accordance with our precedent, was careless and reckless, in violation of § 91.13(a).

We will not accept evidence that could have been, but was not, offered at the hearing before the law judge.²⁷ We conclude that (1) respondent waived his right to introduce the evidence appended to his brief by failing to attempt to introduce it at the hearing; and (2) the evidence is irrelevant.

First, respondent seeks to introduce evidence of "an FAA re-examination of commercial pilot competence for knowledge and skill" that occurred, at the FAA's request, on December 3,

²⁵ Appeal Br. 4. Respondent's *pro se* brief did not include page numbers. Citations to pages in respondent's brief treat the first page of the brief that includes the case caption as page 1.

²⁶ 49 C.F.R. § 821.48(e).

²⁷ Administrator v. Wilkie, Selva, and Heath, NTSB Order No. EA-5565 at 4–5 (2011).

2014.²⁸ Respondent did not attempt to introduce this evidence before the law judge, and evidence of events occurring after respondent's landing on October 22, 2014, is irrelevant.

Second, respondent seeks to introduce documentary evidence demonstrating that his landing on the closed runway complied with a landing procedure that is "taught in U.S. Army flight operations."²⁹ Respondent did not introduce this evidence at the hearing, and whether respondent followed a procedure that he learned in the military is irrelevant.

Third, respondent requests to introduce documentary evidence of "Air Traffic Control (ATC) procedures for operations on closed runways."³⁰ This evidence is cumulative of respondent's testimony.³¹ Moreover, in Administrator v. Richards, we held that ATC procedures used to inform a pilot that landing on a closed runway is at the pilot's own risk are "instructions on how to deal with an insistent pilot," and not any form of "de facto clearance."³²

Fourth, respondent requests to introduce evidence that he was no closer than 1,100 feet to persons or property when he landed,³³ which is also cumulative of testimony at the hearing.³⁴

B. *We affirm the law judge's conclusion and evidentiary rulings.*

Respondent does not contest the facts found by the law judge. He admits knowingly landing on a closed runway.³⁵ Respondent challenges the law judge's conclusion that respondent

²⁸ Appeal Br. 4.

²⁹ Id.

³⁰ Id.

³¹ Tr. 68–69.

³² 3 N.T.S.B. 2112, 2113 (1979) (order denying reconsideration).

³³ Appeal Br. 5.

³⁴ Tr. at 30–31, 34, 107.

³⁵ Id. at 69–70, 74, 93.

was careless or reckless. On appeal, we review the law judge's decision *de novo*.³⁶ We will first summarize our jurisprudence and federal court decisions analyzing § 91.13(a) in the context of operating on a closed runway. Section 91.13(a) provides: "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another." Section 91.13(a) can be a "residual" charge that is predicated on violating other FAA regulations.³⁷ However, the Administrator need not prove a violation of another regulation to prove a violation of § 91.13(a).³⁸ Additionally, the Administrator need not prove actual danger to persons or property. Causing potential danger is sufficient to constitute a careless or reckless operation.³⁹

In Haines, the pilot was instructed by radio to descend to 15,000 feet, but he flew below that altitude, which the Administrator alleged was careless or reckless.⁴⁰ The pilot argued that he did not endanger lives or property because no other aircraft was in the area. The U.S. Court of Appeals for the District of Columbia Circuit held that the Board reasonably concluded that causing potential danger to life or property was careless because "the regulation prohibits any careless or reckless practice in which danger is inherent. . . . The policy of the regulation would be subverted if its enforcement turned on a post facto view of the degree of danger presented."⁴¹ Under this standard, we and the U.S. Courts of Appeals have consistently held that operating on

³⁶ Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013).

³⁷ GoJet Airlines, LLC v. Fed. Aviation Admin., 743 F.3d 1168, 1172 (8th Cir. 2014).

³⁸ Administrator v. Lawson, 5 N.T.S.B. 1524, 1524 (1987) ("It is patent that not every act or omission that could be deemed careless or reckless in violation of [§ 91.13(a)] is spelled out in detail in the regulations."); accord Haines v. Dep't of Transp., 449 F.2d 1073, 1076 (D.C. Cir. 1971)("[T]he regulation prohibits any careless or reckless practice in which danger is inherent.").

³⁹ GoJet Airlines, 743 F.3d at 1172 (citing Watkins v. Nat'l Transp. Safety Bd., 178 F.3d 959, 962 (8th Cir. 1999)); Roach v. Nat'l Transp. Safety Bd., 804 F.2d 1147, 1157 (10th Cir. 1986).

⁴⁰ 449 F.2d at 1075.

⁴¹ Id. at 1076; accord Searight v. Nat'l Transp. Safety Bd., 812 F.2d 637, 639 (10th Cir. 1987) ("Indeed, the act of taking off from a closed airport is itself careless and reckless conduct endangering the lives of . . . passengers, at the least.").

a closed runway is careless or reckless, regardless of whether the landing harmed individuals or property.

In Administrator v. Brown, a pilot knowingly took off from a runway that was closed for construction.⁴² One witness testified that the pilot took off within 100 feet of construction workers and equipment. Several other workers testified, by affidavit, that the pilot came no closer than 500 to 700 feet from the workers, and that the workers did not fear for their safety. We concluded that whether the pilot was as close to the construction as 100 feet, or as far away as 700 feet, was immaterial.⁴³ In either scenario, the takeoff posed a “potential danger” to the workers and equipment, which, we elaborated, “stem[med] from the contingency that the aircraft might develop a mechanical difficulty during takeoff and be compelled to abort the takeoff or make a forced landing on or just off the runway.”⁴⁴

1. *The evidence was sufficient to establish a violation of § 91.13(a).*

Citing pages 88–90 of the hearing transcript, respondent contends that the law judge “would not allow presentation of evidence defending careless operation.”⁴⁵ In the cited transcript pages, respondent did not attempt to introduce evidence. He argued with the law judge over whether knowingly landing on a closed runway was careless or reckless. Thus, we liberally construe respondent’s *pro se* contention as challenging the law judge’s conclusion that respondent was careless or reckless under § 91.13(a).

⁴² 2 N.T.S.B. 1915, 1915 (1975).

⁴³ Id. at 1916.

⁴⁴ Id. at 1917 n.5; see also Administrator v. Szabo, NTSB Order No. EA-4265 at 2–4 (1994) (holding that landing on a runway while another aircraft occupied the runway was careless or reckless); Administrator v. Jones, 4 N.T.S.B. 620, 620 (1982) (concluding that taking off from a closed runway that was operating as a taxiway, a plane parking area, and a place to board and unload passengers was careless or reckless).

⁴⁵ Appeal Br. 2.

We conclude, that, under the lengthy Board precedent already discussed, the Administrator proved that respondent violated § 91.13(a). Respondent admitted that when he landed, he knew that the runway was closed. He neither requested permission to land nor informed anyone that he was going to land. When he landed, he came within 1,100 feet of construction workers and equipment, causing potential danger to persons or property. While respondent testified that he executed a “low pass” to signal his intention to land, nothing in our cases interpreting § 91.13(a) indicates that this unilateral action negates the danger inherent in landing on a closed runway near construction equipment and personnel.

2. *The law judge may rely on precedents interpreting § 91.13(a) that were decided before the Pilots’ Bill of Rights was enacted.*

Respondent argues the law judge erred⁴⁶ by relying on § 91.13(a) cases that were decided before the Pilot’s Bill of Rights (PBR) was enacted on August 3, 2012.⁴⁷ The PBR affords an airman greater procedural protection in FAA enforcement proceedings. Section 2(c) is the only section of the PBR that relates to our standard of review of FAA actions.⁴⁸ Section 2(c) eliminated the statutory requirement that we defer to the FAA’s interpretation of the laws and

⁴⁶ *Id.* at 4.

⁴⁷ Pub. L. No. 112-153, 126 Stat. 1159 (amending 49 U.S.C. §§ 44701, 44703, 44709, 44710).

⁴⁸ Section 2(a) of the PBR renders the Federal Rules of Civil Procedure and the Federal Rules of Evidence applicable, to the extent practicable, to airman appeals to the Board from certain FAA enforcement actions. 126 Stat. at 1159. Section 2(b) requires the Administrator to notify the subject of an investigation in writing about the existence, procedures, and consequences of the investigation. 126 Stat. 1159–60. Sections 2(d) and 2(e) permit federal district courts and federal appellate courts to review certain Board orders upholding FAA actions. 126 Stat. at 1161–62. Section 3 requires the Administrator to commence a NOTAM Improvement Program. 126 Stat. at 1162. Section 4 requires the Comptroller General to review the FAA’s medical certification process. 126 Stat. at 1162–63.

regulations that the FAA administers.⁴⁹ However, this section does not change the meaning of § 91.13(a).

In Administrator v. Jones, we reviewed the PBR’s legislative history and explained that section 2(c) eliminated statutory language that required us to give deference to the FAA because the language merely reiterated the level of deference that Supreme Court precedent already required to be given to federal agency interpretations.⁵⁰ Thus, after the PBR, we still adhere to the Administrator’s interpretation of § 91.13(a) as long as that interpretation is reasonable.⁵¹ The Administrator’s interpretation that respondent violated § 91.13(a) by knowingly landing on a closed runway, when construction personnel and equipment were in the vicinity, was reasonable.

⁴⁹ Section 2(c) struck from 49 U.S.C. § 44703(d)(2) (regarding airman certificates) the requirement that the Board be “bound by all validly adopted interpretations of laws and regulations the Administrator carries out unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.”

Similarly, section 2(c) struck from 49 U.S.C. § 44709(d)(3) (regarding amendments, modifications, and suspensions of certificates) the requirement that the Board be “bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.”

Finally, section 2(c) struck from 49 U.S.C. § 44710(d)(1) (regarding revocation of airman certificates for controlled substance violations) the requirement that the Board be “bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.”

⁵⁰ NTSB Order No. EA-5647 at 19–20 (2013).

⁵¹ Id. at 20 (citing Martin v. Occupational Safety & Health Review Comm’n, 499 U.S. 144, 145 (1991)).

3. *The law judge was not required to define the terms “careless” or “reckless” on the record.*

Respondent complains about two instances during his testimony in which the law judge declined to define “careless” or “reckless.”⁵² First, respondent cites pages 74–75 of the hearing transcript, in which respondent argued that neither the law judge nor the Administrator could define the terms. The law judge explained that respondent was presenting argument instead of facts, and respondent continued to testify.⁵³

Second, respondent cites pages 89–91 of the hearing transcript, in which the law judge stated that he “[i]d]n’t need to” define the terms for respondent.⁵⁴ The law judge pointed out that respondent admitted that he knowingly landed on the closed runway, and asked respondent to articulate why knowingly landing on a closed runway is not careless. Respondent replied, “I want to know what careless is by god.”⁵⁵ The law judge replied, “I think it means landing on a closed runway.”⁵⁶

Our law judges have significant discretion in making evidentiary rulings. In this regard, we will only overturn a law judge's evidentiary ruling when the appealing party can show the law judge's ruling amounted to an abuse of discretion, and resulted in prejudice to the party.⁵⁷ In this case, we affirm the law judge's evidentiary rulings because (1) the law judge did not abuse his discretion; and (2) respondent cannot demonstrate that he was prejudiced by any of the law judge's actions.

⁵² Appeal Br. 2.

⁵³ Tr. at 75:24–76:4.

⁵⁴ *Id.* at 89:13.

⁵⁵ *Id.* at 91:4–5.

⁵⁶ *Id.* at 91:10–11.

⁵⁷ Administrator v. Leyner, NTSB Order No. EA-5732 at 9 (2014).

The law judge was under no obligation to define the terms on the record for respondent. “Control over the orderly presentation of evidence . . . is properly committed to a law judge's discretion.”⁵⁸ The law judge acted well within his discretion by attempting to explain to respondent the difference between argument and evidence.

Our conclusion is the same under Fed. R. Evid. 611, which, under the PBR, is binding on the law judge “to the extent practicable.”⁵⁹ Under Rule 611(a), the law judge is permitted to take “reasonable control” over the presentation of evidence to determine the truth, avoid wasting time, and prevent witnesses from harassment or undue embarrassment. The law judge’s attempt to elicit relevant facts from respondent, and distinguish fact from argument, was well within his discretion.

4. *The law judge did not abuse his discretion in limiting respondent’s cross examination of Ms. Cotham.*

Respondent cross examined Ms. Cotham about whether landing on a closed runway violated FAA regulations:

RESPONDENT: . . . [i]t's against all regulations, you can't do that. Is that true?

MS. COTHAM: I guess if you choose to land on a closed runway, you could.

. . .

RESPONDENT: And it's against regulations to do it. One cannot do that; is that right?

. . .

MS. COTHAM: If you choose to do it, you can do it.

⁵⁸ Administrator v. Gunder, NTSB Order No. EA-4688 at 3 n.4 (1998); accord Administrator v. Daiker, 4 N.T.S.B. 278, 278 (1982) (“[A] law judge in our proceedings, as an incident of his authority, [has] control [over] the presentation of evidence at a hearing . . .”).

⁵⁹ Pub. L. No. 112-153, § 2(a), 126 Stat. 1159.

LAW JUDGE: Let's move on. Mr. Lane, if it's closed, it's closed."⁶⁰

The law judge did not err because Ms. Cotham's opinion was irrelevant. She investigated the complaint that Ms. Gonzales made against respondent, and when the complaint appeared meritorious, she turned the investigation over to an FAA inspector.⁶¹ Thus, the law judge acted well within his discretion in limiting respondent's attempt to elicit an irrelevant opinion from Ms. Cotham about whether respondent violated a regulation.⁶²

5. *The law judge did not abuse his discretion by not permitting respondent to call the Administrator's attorney as a witness.*

Respondent complains that he was not permitted to call as a witness Cade Miller, an FAA attorney who represented the Administrator at the hearing. Respondent contends Mr. Miller was an "important part of the FAA investigation."⁶³ Respondent has not proffered any facts demonstrating why Mr. Miller's testimony would have been necessary. The evidence at the hearing demonstrated that Ms. Cotham, not Mr. Miller, investigated the complaint and turned the investigation over to an inspector. The law judge acted well within his discretion by not allowing respondent to question Mr. Miller.

6. *The law judge did not abuse his discretion in limiting respondent's recitation of his flight qualifications and experience.*

Respondent contends that the law judge erroneously stopped respondent from further elaborating about his flight qualifications.⁶⁴ Respondent admitted a documentary summary of his

⁶⁰ Tr. 54:14–55:7.

⁶¹ Id. at 39–40, 51.

⁶² See Leyner, NTSB Order No. EA-5732 at 8-10 (affirming the law judge's decision to preclude respondent from asking an FAA inspector about what the inspector believed was the appropriate sanction).

⁶³ Appeal Br. 3.

⁶⁴ Id.

aviation qualifications and experience and recited his accomplishments as an Army aviator, arguing that his experience imbued him with the ability and judgment to safely land on a closed runway.⁶⁵ The law judge told respondent: “[W]hat you did 30 years ago is not relevant to the facts today. Let’s move on.”⁶⁶

The law judge did not abuse his discretion. The summary of respondent’s experience and qualifications was admitted into evidence.⁶⁷ Even if respondent could not orally emphasize every aspect of his qualifications, his qualifications were before the law judge in their entirety. Thus, further recitation would have been cumulative of the documentary evidence.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent’s appeal is denied;
2. The law judge’s initial decision is affirmed; and
3. The 60-day suspension of respondent’s commercial pilot certificate shall begin 30 days after the service date indicated on this opinion and order.

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

⁶⁵ Exh. R-1; Tr. at 64–71.

⁶⁶ Tr. 72:14–16.

⁶⁷ Exh. R-1.

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

ORAL INITIAL DECISION AND ORDER

-----X
MICHAEL P. HUERTA, :
ADMINISTRATOR, :
FEDERAL AVIATION ADMINISTRATION :
:
Complainant :
:
v. : Docket No.
: SE-30107
:
VAUGHN S. LANE :
:
Respondent. :
-----X

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2015 DEC 30 P 1:19

Courtroom No. 212
U.S. Custom House
423 Canal Street
New Orleans, Louisiana

Tuesday
December 8, 2015

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

BEFORE:

WILLIAM R. MULLINS
Administrative Law Judge

ORIGINAL

APPEARANCES:

On Behalf of the Complainant:

CADE S. MILLER, Esquire
FAA Enforcement Division,
Southwest Team
10101 Hillwood Parkway, 6N-300
Fort Worth, Texas 76177

On Behalf of the Respondent:

Vaughn S. Lane
1102 East Palmview Street
Gonzales, Louisiana 70737

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ORAL INITIAL DECISION AND ORDER

JUDGE MULLINS: This has been a proceeding before the National Transportation Safety Board, held under the provisions of Section 44709 of the Federal Aviation Act of 1958 as amended, on the appeal of Vaughn S. Lane, and I'll refer to him as Respondent,

1 and he has appealed from an Order of Suspension that
2 seeks to suspend his pilot certificate for a period of
3 60 days.

4 The Order of Suspension serves as the
5 complaint in our proceedings and was filed on behalf
6 of the Administrator and the Federal Aviation
7 Administration through the Southwest Team of the
8 Enforcement Division.

9 The matter has been heard before me,
10 William R. Mullins, Administrative Law Judge, for the
11 National Transportation Safety Board, and as is
12 provided by the Board's rules, I'll issue a bench
13 decision at this time.

14 The matter came on pursuant to notice to
15 the parties and was held here in New Orleans, this 8th
16 day of December of 2015.

17 The Administrator was present throughout
18 these proceedings and represented by counsel, Mr. Cade
19 Miller, and Ms. Rita Price both of the Enforcement
20 Division.

21 And the Respondent was present throughout
22 these proceedings and represented himself.

23 The parties were afforded an opportunity to
24 offer evidence, to call, examine, cross examine
25 witnesses. In addition they were afforded an

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1 opportunity to make argument in support of their
2 respective positions.

3 DISCUSSION

4 JUDGE MULLINS: The Administrator had three
5 witnesses, Ms. Janet Gonzales. She was the manager of
6 the Louisiana Regional Airport located in Gonzales,
7 Louisiana on the date of October 22nd, 2014, and at
8 that time the runway was closed, and Respondent is
9 alleged and admitted that he landed on a closed
10 runway, runway 1735.

11 The second witness was Mr. John Pat Oubre.
12 He was the supervisor of the construction project that
13 was going on out there at that time.

14 Third witness was Lisa Cotham, Aviation
15 Safety Technician of the Baton Rouge, Flight Standards
16 District Office.

17 Administrator had seven exhibits, A-1 was
18 the statement of Mrs. Gonzales; A2, 3 and 3(a) were
19 maps of the airport environment. A2 was sort of the
20 original and then 3 and 3(a) were the blow-up of the
21 construction that was going on. A-4 was a letter of
22 investigation that was sent to Respondent. A-5 was a
23 NOTAM that had been issued and was in effect at the
24 time of this landing, which indicated that the runway
25 was closed. A-6 and 7 are pages out of the sanction

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1 guidance table which supported the sanction of 60
2 days.

3 The Respondent testified and he had three
4 exhibits. First was his C.V. The second was the
5 record of conversation, recorded conversation he had
6 with Mrs. Gonzales. And R-3 was the answer to the
7 Interrogatories that he submitted to the FAA.

8 Ms. Gonzales testified that she was the
9 airport manager that day. She did not see the
10 aircraft land, but was advised that the aircraft had
11 landed. She said she looked out, saw it turning off
12 the runway. I think she identified the tail number,
13 and whether she did or didn't is not important,
14 because Mr. Lane has testified and with his pleadings
15 has stated that it was his aircraft and he made the
16 landing that day.

17 Mr. Oubre testified he was the construction
18 supervisor or inspector there that day. He saw the
19 aircraft, saw it make a pass, saw it on final. He got
20 the people working out there, get their vehicles that
21 were on the runway and get them moved off and said
22 that they were at least 1,100 feet away at the time of
23 the landing.

24 Then Mrs. Cotham testified that she
25 received a phone call from Mrs. Gonzales, asked her to

1 submit a statement which is A-1. She did. And she
2 initiated the letter of investigation, started the
3 investigation.

4 Mr. Lane identified his exhibits. And Mr.
5 Lane, I'll tell you right now, based on your C.V.,
6 that your service to the country is commendable. I
7 thank you for that. And I'm retired out of the Army,
8 and I appreciate the service that you did. Thank
9 you.

10 But that was in his Exhibit R-1, C.V. and
11 that pretty much covered his military record back
12 during the Vietnam era.

13 But he testified, and it was very confusing
14 for me about what he was testifying about. He took
15 issue with Ms. Gonzales's credibility. He took issue
16 with Ms. Cotham's credibility and he seemed to say he
17 never knew who Mr. Oubre was, although then he
18 introduced the R-3 which was the Answer to
19 Interrogatories where it was clear that he knew who
20 Mr. Oubre was.

21 And also, the Administrator's response to
22 the Court Order, Pretrial Order, also indicated who
23 Mr. Oubre was. So I didn't understand that,
24 particularly. And then at the same time he was taking
25 issue with the witnesses, he continued to say that he

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1 knew that the runway was closed and he had every
2 right to land there and he took issue with the Board's
3 continued definition of careless. And particularly,
4 in this type of an incident the Board has said over
5 the years, going clear back to Judge Capp's, that
6 landing on a closed runway is a careless operation.

7 Really the two issues, the only issues for
8 me today wasn't the credibility of the witnesses. Was
9 the runway closed? Yes. The evidence is clear that
10 it was closed.

11 Did Respondent know it was closed? Yes, he
12 even admitted that it was closed. And was it
13 careless? And Board precedent is very clear that this
14 is a careless operation.

15 And as an aside, really, the statement of
16 Mr. Lane that as a certified flight instructor he
17 tells his students that it's okay to land on a closed
18 runway --

19 MR. LANE: Never said that.

20 JUDGE MULLINS: -- that's frightening in
21 and of itself.

22 But it is clear that the evidence in this
23 case has established the Administrator's Order of
24 Suspension as issued, the runway was closed,
25 Respondent knew it was closed, he landed on this

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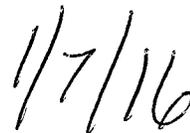
1 closed runway knowing it was closed, and the Board
2 precedent is clear that that's a careless operation.

3 And the Administrator's choice of sanction
4 is appropriate and consistent with the sanction
5 guidance table as admitted in Exhibits 6 and 7. And
6 therefore, the Order of Suspension as issued will be
7 affirmed.

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9 EDITED ON: WILLIAM R. MULLINS

10 JANUARY 7, 2016 Judge

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APPEAL

JUDGE MULLINS: Mr. Lane, you have the right to appeal this order today and you may do so by filing your notice of appeal within 10 days of this date.

The notice of appeal goes to the National Transportation Safety Board, Office of Administrative Law Judges, at Room 4704 at 490 L'Enfant Plaza East, SW, in Washington, D.C. The zip is 20594. And if you do file your notice of appeal, then within 50 days of this date, you must file a brief in support of that appeal.

I need to caution you that the notice of appeal and the filing of the brief must be timely or the Board will disregard it. And I would ask, Mr. Lane, if you will step up and I'll hand you a written copy of your right to appeal so that you will have those addresses and those zip codes and all of that information you need.

MR. LANE: Thank you, sir.

JUDGE MULLINS: All right. Administrator have any questions about the Order.

MR. MILLER: No, Your Honor.

JUDGE MULLINS: Mr. Lane, do you have any questions?

1 MR. LANE: No, sir.

2 JUDGE MULLINS: All right. Then the
3 hearing is terminated. Thank you.

4 (Whereupon, the hearing was concluded at
5 11:45 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 Vaughn S. Lane
Docket No. SE-30107

Before: NTSB

Date: 12-08-15

Place: New Orleans, LA

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

Neal R. Gross

Court Reporter

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