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NTSB Order No. EA-5840

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 May, 2018

DANIEL K. ELWELL, Acting Administrator, Federal Aviation Administration, Complainant, v. KORNITZKY GROUP, LLC, d/b/a AeroBearings, LLC, Respondent.	Docket SE-30476

OPINION AND ORDER

1. ***Background***

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued April 9, 2018.[1] By that decision, the law judge reversed the Acting Administrator's emergency order as to the violation of 14 C.F.R § 145.12(a), and affirmed the

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

Acting Administrator's emergency order as to 14 C.F.R §§ 43.13(a), 145.201(b), (c)(1) and (2).[2] The law judge reduced the sanction from revocation of respondent's repair station certificate to an indefinite suspension of that certificate until such time as respondent complies with directions provided to respondent by the FAA's principal maintenance inspector. Respondent and the Acting Administrator timely cross-appealed. For the reasons set forth below, we reverse the law judge's findings on the intentional falsification violation (14 C.F.R § 145.12(a)), affirm the findings on the other violations, reverse the sanction of suspension of the repair station certificate

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[2] 14 C.F.R. § 145.12(a) provides:

> No person may make or cause to be made:
> (1) Any fraudulent or intentionally false entry in:
> (i) Any application for a repair station certificate or rating (including in any document used in support of that application); or
> (ii) Any record or report that is made, kept, or used to show compliance with any requirement under this part;
> (2) Any reproduction, for fraudulent purpose, of any application (including any document used in support of that application), record, or report under this part; or
> (3) Any alteration, for fraudulent purpose, of any application (including any document used in support of that application), record, or report under this part.

14 C.F.R § 43.13(a) provides: "Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator."

14 C.F.R. § 145.201(b) provides: "A certificated repair station may not maintain or alter any article for which it is not rated, and may not maintain or alter any article for which it is rated if it requires special technical data, equipment, or facilities that are not available to it."

14 C.F.R. §§ 145.201(c)(1) and (2) provide:

> A certificated repair station may not approve for return to service
> (1) Any article unless the maintenance, preventive maintenance, or alteration was performed in accordance with the applicable approved technical data or data acceptable to the FAA.
> (2) Any article after a major repair or major alteration unless the major repair or major alteration was performed in accordance with applicable approved technical data

pending compliance with the Acting Administrator's directions, and reinstate the revocation of respondent's repair station certificate.

A. Relevant Facts

Respondent held a Federal Aviation Administration (FAA) repair station certificate issued in August 2011, which initially authorized respondent to inspect and clean turbine engine bearings. Respondent offered testimony it had conducted research and developed technical data and specialized equipment and procedures for servicing bearings which went beyond the procedures authorized by the original equipment manufacturer (OEM) guidance. Respondent worked with the FAA's then-assigned Principal Maintenance Inspectors (PMI), Chuck Kuckendall and later Gary Watson, to obtain additional ratings. Between 2011 and 2012, respondent applied for and received additional ratings which permitted respondent to perform more services beyond simply inspecting and cleaning turbine engine bearings.[3] The respondent offered services involving additional procedures including disassembling bearings, cleaning and polishing rolling elements, and reassembling bearings and certifying them for return to service.

In December 2015, PMI Gary Watson and other representatives from the FAA conducted a 3-day inspection of respondent. On December 14, 2015, he sent respondent a letter summarizing 11 areas of discussion and review during the inspection:

- Review of all repair station work orders for the past two years.
- [Detail] review of the acceptable / approved data by which your repair station performs work.
- Polishing of the anti-friction media with the individual bearings.
- Re-sizing of the bearing balls and rollers and how you do not perform this task on the bearing balls as you do not have approved data by which to perform this task. You provided a letter to us at the time of inspection, stating the above.
- The process and approved vendor for silver plating certain bearing cages.

[3] Exh. A-2; Tr. 526 and 743.

- The use of donor bearings (used parts). We discussed the traceability of these bearings and the process by which they are used.
- List of contract maintenance functions.
- The condition of the housing and equipment.
- Tooling calibration and equivalency.
- We reviewed all training records for two years and assured all personnel were trained as required.
- Proposed changes and additions to your Operation Specifications.

The letter concluded, "This is to inform you that this office did not find any discrepancies or anomalies during this inspection. We appreciate your cooperation and the professionalism you afforded us."[4]

In fall 2016, the FAA assigned Darren Pittacora to be the PMI for respondent's repair station.[5] On March 24, 2017, Inspector Pittacora sent respondent a letter in which he advised respondent that an investigation had revealed the FAA had "incorrectly issued" one of respondent's ratings in July 2012, in part because the proposed repair data provided at the time by respondent had not been forwarded by the Flight Standards District Office (FSDO) to the appropriate FAA office for review and approval.

This letter followed two hotline complaints, in November 2016, which prompted the FSDO to forward the data provided by respondent in 2012 to the FAA Engine Certification Office (ECO). The ECO subsequently found that while the data could be used in the development of a repair procedure for bearings, it was not specific enough to be approved data for the repair of turbine engine bearings. The March 2017 letter advised respondent that it had 10 days to submit to re-inspection under 49 U.S.C. § 44709 or face enforcement action to suspend its repair station certificate. [6]

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[4] Exh. R-11.

[5] Tr. 183.

[6] Exh. R-12.

The re-inspection was conducted May 9 and 10, 2017. On March 1, 2018, the FAA advised respondent that the re-inspection was unsatisfactory based on nine enumerated findings related to the work performed by respondent, which the FAA found exceeded the scope of work permitted by the OEM or the applicable U.S. military technical manuals (mil specs), or for which respondent was not able to produce approved data for the repairs.[7] The same day, the FAA issued the subject emergency order of revocation.

B. Procedural Background

The Acting Administrator issued an Emergency Order of Revocation on March 1, 2018. The emergency order, which was refiled as the complaint in this case on March 13, 2018, alleged respondent violated 14 C.F.R § 145.12(a), 14 C.F.R §§ 43.13(a), and 145.201(b), (c)(1) and (2) based on 95 enumerated allegations related to work performed based on four work orders and documented on associated Authorized Release Certificates (FAA Form 8130-3) dated January 23, 2017, May 19, 2017, and two from May 12, 2017.

Respondent filed a petition for review on March 16, 2018, followed by an amended answer on March 28, 2018. The proceedings were conducted in accordance with the expedited procedures applicable to emergency cases under 49 U.S.C. §§ 44709 and 46105(c).

Upon proper notice to the parties, the law judge conducted a 4-day hearing beginning April 3, 2018 and issued an initial oral decision on April 9, 2018. The Acting Administrator proffered four witnesses: Inspector Darren Pittacora, Gilbert Queitzsch, Inspector Chuck Kuykendall, and Inspector Gary Watson. Respondent proffered two witnesses: Emanuel Branzai and Zev Galel.

[7] Exh. R-13.

Inspectors Kuykendall and Watson testified generally as to their prior interactions with respondent during the time they were the assigned PMIs. The work orders at issue here were prepared after Inspectors Kuykendall and Watson were no longer assigned to respondent. Moreover, the alleged violations do not relate to the original process of certifying respondent as a repair station or the issuance of any of the advanced ratings. Therefore, the testimony of the two former inspectors will not be described in detail.

Dr. Queitzsch and Mr. Branzai each testified as experts on behalf of the Acting Administrator and respondent, respectively. For the reasons set out below, we do not focus on the technical aspects of the repairs being performed by respondent, but rather on whether they complied with the procedural requirements of the cited regulations, specifically the requirement to have relevant data available. Therefore, the expert testimony offered by the parties will not be described in detail.

Inspector Pittacora testified extensively on the limitations of respondent's authorizations to perform repair services, as well as the details of the various OEM maintenance procedures applicable to each of the types of bearings which were the subject of the four work orders.[8] In particular, he testified that the OEM manuals for the bearings in question did not authorize respondent to disassemble bearings.[9] He also testified that respondent's 8130-3 certifications were false in that they did not fully describe the work that had been performed. However, on cross examination, Inspector Pittacora admitted that the entries on the 8130-3 certifications were

[8] See generally, Tr. 17-242.

[9] Tr. 177.

not in fact false, but that he believed them to be incomplete in that they omitted some information.[10]

Mr. Galel testified that he formed AeroBearings in 2010 with Mike Kornitzky.[11] After initial certification to inspect bearings, they worked together to develop new processes and equipment for performing advanced work on bearings, such as surface preparation or polishing and repairs, based in large part on mil specs TO 44B-1-102 and TO 44B-1-122 for antifriction bearings.[12]

The research which led to the development of the new equipment and procedures was stored on a computer belonging to Mr. Kornitzky. Mr Kornitzky passed away two years ago.[13] Following his death, Mr. Galel was unable to determine the password for the computer, and thus was unable to access the technical data.[14] Mr. Kornitzky's sister eventually donated the inaccessible computer to charity.[15]

Mr. Galel testified extensively on how respondent's various pieces of equipment operate and the different OEM manuals and mil specs they follow in performing inspections and repairs. He explained that the data which was lost when Mr. Kornitzky died related to the design of the specialized machines they developed, such as "how to operate it, what speeds" and contended that "the equipment has been designed. It's made. It's set to operate in a certain way, to operate

[10] Tr. 419-420.

[11] Tr. 526.

[12] Tr. 526-530, 564-565; Exhs. 10 and 32.

[13] Tr. 527.

[14] Tr. 554.

[15] Tr. 621.

in parameters that have been set. That data is still important, but we don't have it."[16] He testified that the development data led to the new procedures, such as the parameters of the abrasive used and the amount of time the machine would be operated. Even without the data, Mr. Galel testified that respondent conducts "occasional, periodic confirmation that the machine is still doing what it's supposed to do" and that he can ensure the equipment "continues to operate consistently" by "measuring the outcome of what [the] equipment produces."[17]

Regarding the 8130-3 certifications which are at issue here, Mr. Galel testified that respondent was certifying that the final inspection the work performed--that is of the final cleaned, polished and reassembled bearings--was done in accordance with the inspection sections of the relevant OEM manuals.[18] As to the work done before final inspection and certification, Mr. Galel testified that the relevant OEM manuals authorize use of equivalent tools equipment and consumables, and therefore, respondent is authorized to use the specialized equipment and procedures they developed. He further testified that to the extent the specialized procedures contradict the OEM manuals, for example in disassembly of bearings, respondent's Limited Specialized Services rating authorizes it to use its own specialized procedures and mil specs.[19] The applicable mil specs do provide methods by which bearings may be disassembled, cleaned and reassembled.[20]

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[16] Tr. 623-624.

[17] Tr. 555, 626.

[18] Tr. 577-578.

[19] Tr. 604-608.

[20] Exh. 10.

C. Law Judge's Oral Initial Decision

At the conclusion of the hearing, the law judge summarized the testimony and evidence received. The law judge concluded the Acting Administrator failed to establish by a preponderance of credible evidence that respondent intentionally made false entries on Authorized Release Certificates, dated January 23, 2017; May 19, 2017; and two dated May 12, 2017, resulting from four work orders. However, the law judge concluded that the Acting Administrator established that respondent failed to demonstrate that the procedures used by the repair station were acceptable to the Acting Administrator, available to respondent's employees performing the repairs, and that those repairs were performed in accordance with the technical data that supported the certification of the repairs. Additionally, the law judge found that respondent failed to meet its burden of proof for the affirmative defenses included in the Amended Answer to the Acting Administrator's complaint.[21] He based his determinations on the documents admitted into evidence and his limited credibility findings, which were more favorable to the respondent's witnesses and found the two key witnesses for the Acting Administrator to be biased.[22] In making his determinations, the law judge considered the demeanor of the witnesses and noted that respondent's primary witness was "very knowledgeable."[23] The law judge reduced the Administrator's emergency order of revocation,

[21] Oral Initial Decision at 825. Respondent's Amended Answer listed several affirmative defenses (reasonable reliance on the Acting Administrator's actions, abuse of process, stale complaint, and laches). Respondent, however, specifically argued his affirmative defense of dismissal because the complaint is stale. The law judge correctly noted the burden of proof shifts to respondent to prove its affirmative defenses and specifically found that burden had not been met, except that the law judge expressly addressed the claim of a stale complaint. See the Decision section below. Id. at 827.

[22] Id. at 821-822.

[23] Id. at 822.

finding that respondent committed only violations of 14 C.F.R. § 43.13(a), §§ 145.201(b), (c)(1) and (c)(2); thus ordering respondent's repair station certificate be suspended pending its compliance with the Acting Administrator's directions.[24]

D. Issues on Appeal

Respondent argues the law judge erred in denying its motion to dismiss the Acting Administrator's complaint because the complaint was time-barred under the Board's stale complaint rule.[25] Respondent also argues that the Acting Administrator failed to prove respondent was required to provide the information the Acting Administrator sought in order to determine if the repair station's procedures were acceptable and performed according to the technical data submitted, which supported respondent's advanced Specialized Services rating. Finally, respondent argues that an indefinite suspension is an inappropriate sanction. The Acting Administrator argues the law judge committed error when he failed to uphold the charge of intentional falsification and when he reduced the sanction from revocation to suspension.

2. Decision

While we give deference to our law judge's rulings on certain issues, such as credibility determinations,[26] the case is reviewed *de novo*.[27]

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[24] Id. at 825.

[25] 49 C.F.R. § 821.33.

[26] 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).

[27] Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

A. Stale Complaint Rule

Respondent argues the law judge erred in denying its motion to dismiss the Acting Administrator's complaint under the Board's stale complaint rule.

The stale complaint rule provides for dismissal of a complaint that "states allegations of offenses which occurred more than 6 months prior to the Administrator's advising the respondent as to reasons for proposed [enforcement] action," with an exception: "where the complaint alleges lack of qualification of the respondent, the law judge shall first determine whether an issue of lack of qualification would be presented if all of the allegations, stale and timely, are assumed to be true. If so, the law judge shall deny the respondent's motion" to dismiss the complaint.[28]

The Federal Aviation Regulations prohibit intentional falsification of information on any document or record required to be kept, made or used to show regulatory compliance.[29] If information has been intentionally falsified, the repair station's certificate may be suspended or revoked.[30] The Board will carefully scrutinize a complaint to determine whether it, with "specificity [that] must be apparent on [its] face," permits "the law judge to conclude that respondent lacks the qualification necessary to hold a certificate, when assuming the truth of the allegations," for purposes of the stale complaint rule.[31]

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[28] 49 C.F.R. § 821.33.

[29] 14 C.F.R. § 145.12(a)(1)(ii).

[30] 14 C.F.R. § 145.12(a).

[31] Administrator v. Ducote, NTSB Order No. EA-5664 at 22 (2013), Huerta v. Ducote and NTSB, 792 F.3d 144 (D.C. Cir. 2015), Administrator v. Ducote, NTSB Order No. EA-5830 (2017) ; see Administrator v. Armstrong, NTSB Order No. EA-5629 (2012), pet. for recon. denied, NTSB Order No. EA-5660 (2013).

Respondent argues that because the law judge held that the Acting Administrator did not prove its charge of falsification of records, the remaining charges are stale because the bases of the charges were known more than six months prior to the Acting Administrator's revocation action. According to respondent, the Acting Administrator used the falsification charge to bootstrap the charges into a timely action. Additionally, respondent asserts that Administrator v. Brea requires that to show good cause for delayed charges, the Acting Administrator must demonstrate "reasonable prosecutorial diligence is exercised after [the Administrator's] receipt of information concerning the act(s) or omission(s) which may be indicative of such a violation."[32] The latest work order at issue is dated May 19, 2017. The Acting Administrator collected the work orders on June 9, 2017. The emergency order of revocation was issued nearly nine months later, on March 1, 2018. Because the falsification charge was dismissed and the Acting Administrator has not shown good cause for its delay in bringing the remaining charges, Respondent asserts that these remaining charges are stale and also must be dismissed.

The respondent neglects a crucial piece of the analysis, however. When determining if the complaint is stale, the law judge must determine, when assuming that the allegations are true as charged, whether respondent lacked the qualification needed to hold a repair station certificate. Acting Administrator's complaint alleged respondent intentionally falsified the maintenance entries on four FAA Form 8130-3s, which identifies the work performed by the repair station. Specifically, Block 12 of the Form 8130-3 indicates that the bearings were overhauled according to the OEM's inspection procedure, but the Acting Administrator asserts that the overhaul work in fact was apposite the inspection procedure. Further, respondent disassembled bearings although the Acting Administrator argues that disassembly is prohibited.

[32] Administrator v. Brea, NTSB Order EA-3657 at 3 (1992).

The Acting Administrator presents at least four additional entries on the Form 8130-3 that it argues are false. Thus, the law judge properly determined the complaint alleged a lack of qualification, assuming the truth of the allegations for purposes of the stale complaint rule. The additional charges were not bootstrapped to the falsification charge, and therefore, they should not be dismissed under the rule's six-month limitation.

B. Intentional Falsification

The Board adheres to the three-prong test of Hart v. McLucas in determining whether falsification occurred. To prevail on an intentional falsification claim, "the Administrator must prove the respondent (1) made a false representation, (2) in reference to a material fact, and (3) had knowledge of its falsity."[33]

a. Prongs 1 and 2 – Falsity and Materiality

The law judge found no false entries (and thus, did not address materiality) because he concluded, "[Inspector] Pittacora finally admitted on cross-examination that the entries on these forms was not false. He thought it was incomplete, but that's not intentional falsification. So, the intentional falsification issue went out the -- well, was no longer for my consideration after his testimony that he thought it was incomplete."[34]

The law judge erred under the Board's precedent in making this determination. The Board has stated consistently that mechanics and repair stations must maintain "scrupulously accurate" records for both the benefit of the FAA as well as the safety of the public.[35] In 2016,

[33] Hart v. McLucas, 535 F.2d 516, 520 (9th Cir. 1976).

[34] See Oral Initial Decision at 816.

[35] See Administrator v. Lawson, NTSB Order No. EA-5772 (2106); Administrator v. Brauchler, NTSB Order No. EA-5594 (2011); Administrator v. Partington, NTSB Order No. EA-5453 (2009); Administrator v. Nunes, NTSB Order No. EA-4567 (1997); Administrator v. Guerin,

this Board in Administrator v. Lawson expressly held that incomplete records were material under Hart v. McLucas – "[t]his erroneous, incomplete entry was material, because it would undoubtedly affect decisions inspectors, mechanics, or operators might make concerning work on the aircraft."[36] In Lawson, this Board rejected an argument like the one the present respondent makes that it was unnecessary to describe all deviations in the logbook so long as certain ones were included.

It is important to highlight the entire exchange on cross-examination between respondent's counsel and Inspector Pittacora.[37]

> **Respondent's Counsel:** And if they did an inspection in accordance with the inspection section of the manual, then it's appropriate to make that entry that appears in the first sentence of block 12, isn't it?
>
> **Inspector Pittacora:** It is, but it's inappropriate to omit the work that you did in addition to that inspection.
>
> **Respondent's Counsel:** Okay. So in your opinion, there was things omitted from block 12.
>
> **Inspector Pittacora:** Correct.
>
> **Respondent's Counsel:** Okay. But that first sentence is not false, is it?
>
> **Inspector Pittacora:** No. It's not false.
>
> **Respondent's Counsel:** Okay. And, in fact, the rest of block 12 isn't false, is it? We went through it sentence by sentence earlier.
>
> **Inspector Pittacora:** I understand that. (Perusing document.) No.
>
> **Respondent's Counsel:** Okay. Now, is it your position that block 14(a) is a false statement?

NTSB Order No. EA-3827 (1993); and Administrator v. Morse, NTSB Order No. EA-3766 (1992).

[36] NTSB Order No. EA-5772 (2106).

[37] Tr. 419-20.

Inspector Pittacora: Yes.

Respondent's Counsel: And what is false about 14(a)?

Inspector Pittacora: Because it's not -- not all the information is there.

Respondent's Counsel: Because there's omitted information.

Inspector Pittacora: Yes.

Respondent's Counsel: So the falsity of A-3A, A-3B, A-3C, and A-3D all lies in the fact that there's certain information that you feel was omitted and should be added to this to make it 100 percent accurate.

Inspector Pittacora: Yes.

Respondent's Counsel: Okay.

Inspector Pittacora: ***And the reason I think it's false and intentional is because all four documents omit more than just the inspection. The rest of it is where -- they say, the devil lies in the details. That's -- there's a lot of work that gets done there that's not documented on there, that the end user should be made aware of to make a reasonable assumption of airworthiness prior to installing it in a large turbo engine.*** (emphasis added).

Respondent's Counsel: Okay. So with regard to these four 8130 return-to-service documents, you feel that there's multiple omissions on each of these documents.

Inspector Pittacora: Yes, sir.

Additionally, respondent admits there were omissions from the records and that it would provide further details to an end user if those details were requested. The Federal Aviation Regulations (FARs) require the records to be clear on their face. It should not be up to the end user to have to request whether the maintenance records they possess are the ***complete*** set of records – that is the reason for maintaining scrupulously accurate records.

We find the omission of important maintenance information can be as serious a threat to safety as inclusion of incorrect information. In fact, because the information provided, though incomplete, is verifiable, it can provide a false sense of confidence in the maintenance work performed. It is important that future mechanics and owners understand all actual work that has

been conducted. Particularly when a manufacturer's recommendation has been disregarded, it should not be incumbent on a consumer to request an accurate description be recorded. Therefore, we disagree with the law judge and find that omission of material facts can be equivalent to falsified facts.

Based upon the evidence adduced at hearing, we conclude that the Acting Administrator, met his burden under prongs one and two of the Hart v. McLucas test – the incomplete records were false and the need for the FAA and end user to rely on that missing information in the records was material. This conclusion is consistent with the Board's precedent in Lawson.

b. Prong 3 – Knowledge

In intentional falsification cases, the Board has found the law judge's findings regarding credibility of the witnesses are essential to the case. In Administrator v. Dillmon, the Board explicitly instructed law judges to make specific factual findings—especially with regard to credibility—when a respondent asserts, as a defense, he or she believed the answer or information provided on a document was correct.[38] The District of Columbia Circuit's opinion remanding Dillmon stated the Board must complete such an analysis, in light of the three-part Hart v. McLucas test.[39] As a result, and as the Board emphasized in Dillmon post-remand, credibility findings from the law judges are necessary in intentional falsification cases. Similarly, in Administrator v. Reynolds, the Board found that credibility determinations are necessary in a mechanic logbook falsification case as well.[40]

[38] NTSB Order No. EA-5528 (2010).

[39] See Dillmon v. NTSB, 588 F.3d 1085, 1094 (D.C. Cir. 2009).

[40] NTSB Order No. EA-5641 (2012).

i. Credibility Determinations

In this case, the law judge's credibility determinations regarding all witnesses were arbitrary and capricious under the carefully enumerated and consistently followed standard in Administrator v. Porco.[41] In Porco, the Board held that to determine whether knowledge was established by a preponderance of the evidence, the law just must make credibility determinations of the witnesses. The Board will not overturn a law judge's credibility determination unless a party can establish the credibility determination was arbitrary and capricious.[42] The Board has held that a law judge's credibility determinations should be based explicitly on factual findings in the record.[43]

In this case, the law judge did not tie his determinations to evidence in the record. The law judge found the FAA's witnesses to be not credible because the witnesses did not discuss a prior inspection from several years earlier, and the law judge speculates that the FAA inspectors re-inspected with revocation in mind. The law judge's erroneous reliance on a prior inspection conducted by other inspectors overlooks the fact that 49 U.S.C. § 44709 permits the FAA to conduct a reinspection of an air agency "at any time" regardless of whether the air agency has passed prior inspections or whether the inspectors are going with revocation in mind.[44] To the extent the law judge found the FAA witnesses to be less than credible based on the FAA's 1) appropriate and entirely permissible option to re-inspect, 2) reliance on multiple complaints as a

[41] NTSB Order No. EA-5591 (2011).

[42] See Porco at 20-21.

[43] Id. at 11, 23.

[44] Although the law judge expressed displeasure that one FAA inspector viewed the situation at the repair facility differently than a prior investigator and took action without consulting him, this is not relevant to the outcome. Investigative consistency and efficient response to potential violations is desirable; however, the FAA is not and should not be prevented from taking action to address any unsafe condition an inspector discovers.

catalyst for re-inspection, or 3) decision to proceed with a legal enforcement action as opposed to a compliance or other measure, the law judge's credibility findings were arbitrary and capricious. Moreover, the law judge's speculation as to the source of the anonymous complaints is irrelevant and inappropriate in this context. The only requirement under 49 USC § 44709(c) is that the FAA give the certificate holder an opportunity to answer the charges and be heard prior to revocation – which procedurally is exactly what the FAA did in the instant case. To find the FAA inspectors not credible for following FAA procedures is arbitrary and capricious.

Likewise, the law judge's statement that he questioned the credibility of the FAA inspectors because he thought they conducted the reinspection with revocation in mind is not based upon record evidence but rather is speculation in the mind of the law judge.[45] This is also arbitrary and capricious because it is not evidence based.

Furthermore, the law judge's determinations that respondent (Mr. Galel) was a credible witness is arbitrary and capricious and not based on record evidence as required by the jurisprudence under Porco. The law judge simply made the statement that he found Mr. Galel to be knowledgeable and credible without tying this determination to any specific findings in the record. Mr. Galel's story that the computer was locked (and later donated to charity) so he could not obtain the requested data is clearly self-serving. His testimony throughout the record is contradictory and defies credulity. He fails to explain how, if the data has been lost, respondent can conduct the periodic confirmations to ensure the equipment was functioning as it was supposed to.

[45] Tr. 817.

ii. *Knowledge of the falsity*

We also believe respondent had knowledge of the falsity. This case provides the Board with an opportunity to expressly expand the Board's "willful disregard" standard from Administrator v. Boardman,[46] Administrator v. Cooper,[47] and Administrator v. Taylor,[48] to mechanic intentional falsification cases. In medical certificate falsification cases, Boardman stands for the proposition that an airman must read a question carefully before answering it. The same is true in this case. When a repair shop does maintenance work, under the Board's jurisprudence, it must be scrupulously accurate in its records. This respondent, by admittingly picking and choosing what to include in its records and leaving it up to the FAA and end user to guess as to whether the records contained the ***full and complete*** record of maintenance done on the aircraft, exhibited a willful disregard for the FARs which were established to promote aviation safety.

Similarly, Hart v. McLucas does not require a finding of intent to defraud, only the proof of the lesser conduct of knowing falsity. This is a higher standard than simply asking the FAA to show the information was incomplete. Instead, the FAA must prove by a preponderance of the evidence that the respondent knew that the information was incomplete, or said another way, that the respondent chose to provide only partial information. The FAA proved that the respondent failed to provide full and complete answers to material questions. There is no evidence in the record to suggest the omissions were by mistake. Clearly respondent could, and sometimes did, provide complete maintenance information, and doing so remained that respondent's

[46] NTSB Order No. EA-4515 (1996).

[47] NTSB Order No. EA-5538 (2010).

[48] NTSB Order No. EA-5611 (2012).

responsibility. No evidence suggests that respondent was compelled or required to omit information. Whether the respondent's motivation was simply a desire to save time or part of a larger scheme to intentionally misinform is irrelevant. Knowledge, not motivation, is the question before this Board. Respondent admitted the choice to omit material information unless a client specifically requested it. The evidence taken together suggests that respondent knew the information provided on the forms in question was not complete. We find this willful and knowing omission rises to the level to meet the third prong – knowledge – under the Hart v. McLucas test.

C. *Other Charges*

Respondent argues that the law judge erred when he found a lack of compliance with 14 C.F.R. § 43.13(a) because the Acting Administrator raised questions about the procedures used by the repair station that respondent could not answer, and respondent could not make available or show that repair work was done in accordance with approved technical data, as required by 14 C.F.R. § 145.201(b), §§ 145.201(c)(1) and (c)(2). Respondent received its initial repair station certificate in August 2011, which allowed it to inspect and clean turbine engine bearings. During the next year, respondent developed technical data and specialized equipment in support of issuance of additional ratings which authorized advanced work, to include disassembling and reassembling bearings after cleaning and polishing the rolling elements.[49] It worked with the PMIs to obtain the additional ratings, which were issued in 2011 and 2012. Respondent continued this work through March 2018.

In late 2016, Inspector Pittacora was assigned to respondent's facility. On March 24, 2017, Inspector Pittacora sent a letter to respondent stating that the FAA should not have issued

[49] Tr. 526, 743.

the 2012 rating that allowed respondent to repair turbine engine bearings because its data did not provide the level of specificity that was needed to assess its procedures. This letter advised that the repair station must be reinspected within ten days.[50] The inspection occurred on May 9-10, 2017. During this inspection, respondent was unable to produce the technical data that supported its additional ratings. That data was stored on a computer owned by one of respondent's original owners, Mike Kornitzky, but when he passed away in 2016, the data was locked in password-protected files.[51] Eventually, Mr. Kornitzky's sister donated the computer to charity.[52]

Respondent asserts that it could reproduce the data, but it hasn't needed to because the machines were working as designed, and the quality control performed on the bearings, and lack of complaints from customers, demonstrated that the work was acceptable. Nonetheless, respondent agreed that the technical data was needed to demonstrate that the procedures were performed in accordance with the data, and it must be shown to the Acting Administrator when requested.[53]

Based on the testimony and lack of proffered technical data, respondent does not present any reason that compels us to reverse the law judge's decision in any regard. The argument that the machines are working as designed because the bearings are repaired and inspected within acceptable ranges, is not persuasive. Respondent understood the value of the technical data locked in the computer because he attempted to unlock the computer and was greatly disappointed when the attempts were unsuccessful.[54] Further, respondent does not refute that he

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[50] Exh. R-12.

[51] Tr. 554.

[52] Tr. 621.

[53] Tr. 554-555.

[54] Id.

did not satisfactorily maintain the technical data, or that it could not be produced when the Acting Administrator requested it. Given the unequivocal language of sections 14 C.F.R. § 43.13(a), 14 C.F.R. § 145.201(b), and 14 C.F.R. §§ 145.201(c)(1) and (c)(2) requiring a repair station to have access to its technical data and demonstrate that it is operating its facility in accordance with the technical data and procedures acceptable to the Acting Administrator, we hold that respondent's failure to comply with these requirements constitutes sanctionable violations.

D. Sanction Determination

In this case, curiously the Acting Administrator and respondent both agree indefinite suspension is the inappropriate sanction and cross-appeal on this issue.

Applying our standard of *de novo* review to the case before us, because we find that respondent committed intentional falsification, we also reinstate the revocation. Under the Board's jurisprudence we have long-stated that:

> [Intentional falsification] warrants revocation, because "an individual who does not ensure the scrupulous accuracy of his representations in records on which air safety critically depends cannot be said to possess the necessary care, judgment, and responsibility required of a mechanic. " In this regard, the Administrator relies on the accuracy of maintenance records, because the FAA cannot fulfill its responsibility in promoting aviation safety unless "logbooks are free of knowing misrepresentations of fact."[55]

In addition to the finding of intentional falsification, revocation is appropriate for the remaining violations.

Under the FAA Sanction Guidance Table, the FAA can order an indefinite suspension pending completion of a reexamination or proof of qualification; however, we are uncertain that

[55] See Administrator v. Lawson, NTSB Order No. EA-5772 (2016) (internal citations omitted).

the sanction of "indefinite suspension" is one the Board can assess under the law as we cannot order a reexamination or proof of qualification – those are actions for the enforcement agency. FAA rules specify situations when it may be appropriate to work with parties to help them come into compliance. Indeed, this Board agrees that is generally a desirable outcome. However, the FAA's rules also consider this only one option. The FAA is not required, particularly when pursuing falsification complaints, to allow a respondent an opportunity to come into compliance. Moreover, there is no proof in the record that this respondent was able to do so.

In the Air Trek case, the Board affirmed a law judge's reduction of revocation to an indefinite suspension.[56] Air Trek is factually distinguishable from the case at hand because it involved operational violations and the Board expressly noted that the suspension would remain in effect until the company instituted "operating and maintenance procedures and training with adequate oversight and safeguards acceptable to the Administrator." Therefore, Air Trek could complete those set tasks and get its certificate back from the Administrator. A very certain compliance criteria was established.

In the case at hand, there is no clear answer as to what the respondent or the FAA would need to do to comply with the law judge's proposed sanction. The law judge's analysis does not support his choice of sanction. [57] Respondent correctly notes that the indefinite suspension is a *de facto* revocation. Even if we accept the records, as described by the respondent, once existed, the originals are irrevocably lost. Respondent cannot produce the records; the FAA already asked for them and respondent failed to produce them – that is the very reason for the enforcement

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[56] See Administrator v. Air Trek, NTSB Order No. EA-5440 (2009).

[57] When explaining his decision to reduce the sanction to suspension pending compliance with the Acting Administrator's instructions, the law judge expressed concern for the employees of AeroBearings. The sanction, however, must be determined based upon the relevant regulations and established precedent.

action. The only logical sanction is revocation. Respondent did not produce the data on which it purportedly relied at the time of FAA's inspection or during any subsequent hearing of this matter. There is simply no precedent that allows an indefinite, unspecified time for a respondent to finally produce data which it has said on the record cannot be retrieved. Neither the law judge nor the Board should speculate that the records or data may be recreated. If the Board affirmed the indefinite suspension, the Board would be creating a sanction that seems to put both parties in an endless, repeating loop. That is not the intent of an enforcement action. Thus, the Board reinstates the revocation as the appropriate sanction under its long-standing jurisprudence.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Acting Administrator's appeal is granted; and
3. The law judge's oral initial decision is reversed, in part. The Acting Administrator's emergency revocation of respondent's repair certificate is affirmed.

DINH-ZARR AND WEENER, Members of the Board, concurred in the above opinion and order, SUMWALT, Chairman, approved the original opinion and order. SUMWALT, Chairman, submitted the following statement concurring in part and dissenting in part.

Chairman Robert L. Sumwalt, III, Concurring in Part and Dissenting in Part

In the case before us, I concur with the majority that the Acting Administrator proved, by a preponderance of the reliable evidence, violations of 14 C.F.R §§ 43.13(a), 145.201(b), (c)(1) and (2), and that those charges should not have been dismissed for violation of the Board's stale complaint rule, as alleged by respondent. For the reasons noted herein, however, I dissent from

the majority's finding of intentional falsification under 14 C.F.R § 145.12(a), and its reversal of the law judge's choice of sanction.

In reversing the law judge's holding that respondent in this case had not violated 14 C.F.R § 145.12(a), the majority analyzes the facts of this case using the three-prong standard set forth in Hart v. McLucas.[58] Focusing on the third prong of this standard – knowledge of the falsity of the fact – the majority rightly notes that our precedent demands our law judges undertake an assessment of the credibility of a respondent when he or she asserts a belief that information provided on a document was correct.[59] The majority further notes that we will not overturn a law judge's credibility determination unless a party can establish that the credibility determination was arbitrary and capricious.[60]

In the case before us, however, the law judge failed to make express credibility determinations relative to the third prong of the Hart v. McLucas standard. The issue of intentional falsification was instead summarily dispensed with when the law judge stated:

> There was no proof of the intentional falsification. Mr. Pittacora finally admitted on cross-examination that the entries on these forms was not false. He thought it was incomplete, but that's not intentional falsification. So the intentional falsification issue went out the -- well, was no longer for my consideration after his testimony that he thought it was incomplete.[61]

Only twice in the entirety of his decision did the law judge approach a credibility determination; respectively, those efforts were oblique ("But from a credibility standpoint, I think that Mr. Pittacora and Dr. Queitzsch went out there with revocation in mind rather than to help this repair

[58] 535 F.2d 516, 520 (9th Cir. 1976).
[59] See, e.g., Administrator v. Dillmon, NTSB Order No. EA-5528 (2010).
[60] Administrator v. Porco, NTSB Order No. EA-5591, at 20-21 (2011).
[61] Tr. 816.

station.")[62] and negligible ("I think Mr. Galel was a very knowledgeable witness, and credible about his procedures that he was using….").[63]

Though the majority spends much time striking as arbitrary and capricious the law judge's credibility determinations, I would instead posit that no express credibility determinations exist. The proper procedure therefore would have been to remand the case to the law judge with instructions to render such credibility determinations as to each witness, and to tie those determinations to specific factual findings in the voluminous record before us. This, the Board did not do.

Instead, the majority holds that this case provides "an excellent opportunity to expressly expand the Board's 'willful disregard' standard… to mechanic intentional falsification cases." The majority would apparently find that any failure to be "scrupulously accurate" in a mechanic's logbook would foreclose the ability of a respondent to subsequently argue that he or she did not knowingly make a false entry, for the respondent's own actions here clearly demonstrate "a willful disregard for the FARs which were established to promote aviation safety." I do not share the majority's enthusiasm for such expansion of this jurisprudence, when doing so – practically, if not intentionally – absolves the Board of its responsibility to undertake the very analysis of a respondent's subjective intent and understanding called for in Acting Administrator v. Reynolds:[64]

> As a result, and as we emphasized in Dillmon and Singleton, credibility findings from our law judges are necessary in intentional falsification cases, because the Board must consider a respondent's subjective understanding of questions on medical certificate applications. Similarly, we find this subjective intent element enumerated in Dillmon and Singleton, as it relates to knowledge under the third prong of the Hart v. McLucas test, applicable in a mechanic logbook falsification case as well. Therefore, in this case, **the**

[62] Tr. 821.
[63] Tr. 822.
[64] NTSB Order No. EA-5641 (2012).

three-prong Hart standard required the law judge to determine whether respondent's testimony that he lacked the intent to insert a false entry in the helicopter's logbook was credible.[65]

The majority argues that "Hart v. McLucas does not require a finding of intent to defraud" – a curious statement, since no such argument was raised by either respondent or the Acting Administrator in their briefs to the Board. It then continues by stating, "[T]he FAA must prove by a preponderance of the evidence that the respondent knew that the information was incomplete, or said another way, that the respondent chose to provide only partial information." I respectfully submit that this is a misapplication of the Hart v. McLucas standard: the FAA must prove by a preponderance of the evidence that respondent knew that the information on the Authorized Release Certificates (FAA Form 8130-3) was *false*, not simply that it was incomplete. This analytical shortcut, combined with the application of the "willful disregard" theory, places the Board back into a pre-Dillmon posture, in which the majority fails to accord respondent's subjective intent in issuing the certificates the consideration it deserves.

I do not agree with my colleagues that the record before us demonstrates that the testimony of Mr. Galel on respondent's behalf is "self-serving…contradictory and defies credulity." In the absence of remanding the case back to the law judge for express credibility determinations in light of the third prong of the Hart v. McLucas standard, I would instead suggest the Board should rightly have held that the Acting Administrator failed to carry the burden of proving, by a preponderance of the evidence, that respondent made false, material statements with knowledge of the falsity of the fact. I therefore dissent from the majority's finding of a violation of 14 C.F.R § 145.12(a).

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[65] Id. at 8-9 (emphasis added) (internal citations omitted).

As I disagree with the majority in its finding of intentional falsification, so also do I disagree with its reinstatement of the sanction of revocation. The majority questions the Board's underlying authority to approve the law judge's chosen sanction of indefinite suspension pending compliance, for respondent's violation of the FARs requiring maintenance to be performed "in accordance with the applicable approved technical data or data acceptable to the FAA."[66] This speculation is based upon the majority's argument that the Board "cannot order a reexamination or proof of qualification – those are actions for the enforcement agency." As a primary matter, the law judge sought to order no such actions in his decision; rather, he intended for respondent to recreate the special technical data supporting respondent's inspections and maintenance – data which respondent testified was lost when the deceased partner's computer was donated to charity – to the satisfaction of the Acting Administrator.[67] Moreover, the law judge's choice of sanction was not an overreach: as the majority notes, the Board affirmed a law judge's reduction of sanction from revocation to indefinite suspension in Administrator v. Air Trek.[68] Inexplicably, the majority seeks to distinguish Air Trek from the case now before us under the theory that the former involved operational violations, and the curing action by that respondent amounted to instituting "operating and maintenance procedures and training with adequate oversight and safeguards acceptable to the Administrator."[69] It defies logic that the respondent in Air Trek was somehow better situated to earn the Administrator's satisfaction – through the wholesale creation of operating, maintenance, and training, and oversight procedures from the ground up – than is the respondent now before the Board.

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[66] 14 CFR 145.201(c)(1). Collectively, the relevant FARs found to have been violated are 14 C.F.R §§ 43.13(a), 145.201(b), (c)(1) and (2).
[67] Tr. 620-21.
[68] NTSB Order No. EA-5440 (2009).
[69] Id. at 13.

In dismissing the viability of a successful showing by respondent, the majority posits that "there is no proof in the record" that respondent would even be able to come into compliance with the FARs, by producing the special technical data to the Acting Administrator's satisfaction – that data, the majority claims, is "irrevocably lost."[70] Given the sheer length of the hearing transcript, the majority could easily be forgiven for overlooking this direct testimony offered by Mr. Galel:

> Now, all of the data can be redone. Nothing cannot -- nothing is lost in the sense of permanent. We can recreate the data. It's not that it's not possible.[71]

We need not, as the majority warns, "speculate that the records or data may be recreated," because there exists in the record testimony establishing precisely that. Just as the majority would leave up to the FAA any determinations of qualification, so also would I leave to it the determination of whether respondent here could reproduce the special technical data necessary to earn the Acting Administrator's satisfaction, rather than making such negative pronouncements ourselves.

Lastly, the majority falls into the rhetorical trap of pronouncing, "Respondent correctly notes that the indefinite suspension is a *de facto* revocation." The Board previously rejected this very line of argument in Administrator v. Darby Aviation.[72]

> Finally, we wish to emphasize that we do not view this indefinite suspension of Darby's certificate (until such time as it demonstrates to the satisfaction of the FAA that it has not surrendered operational control of its certificate) as a de facto revocation action, and we

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[70] The majority inserts into its sanctions analysis the phrase, "Even if we accept the records, as described by the respondent, once existed…." I decline to take such an inexplicably suspicious view of the special technical data's existence, given that the December 14, 2015, letter provided to respondent by FAA PMI Watson noted that Mr. Watson's three-day inspection of respondent included, "[Detail] review of the acceptable / approved data by which your repair station performs work." Exh. R-11.

[71] Tr. 555.

[72] NTSB Order No. EA-5159 (2005).

> trust the FAA is not treating it as such. The FAA's emergency suspension is seemingly based on the premise that more information is needed to properly evaluate and consider whether Darby can continue to operate without impermissibly relinquishing operational control. Despite our agreement with the FAA that sufficient evidence exists on this record to conclude that Darby has done so, we assume that the FAA will nonetheless provide Darby with an opportunity to demonstrate that it can operate future Part 135 flights without impermissibly giving up operational control. Further, in light of the Birmingham FSDO's acquiescence in Darby's current operational profile, we think that the FAA has a heightened obligation to co-operate with Darby in attempting to restructure its operations so as to satisfy the FAA that it can maintain operational control.[73]

Here, as in Darby Aviation, more information is needed to properly evaluate whether respondent was performing inspections and maintenance using the methods, techniques, practices and special technical data acceptable to the Administrator, and also whether it may do so again in the future. Given the testimony noted above that the data can be recreated, it appears to me eminently sensible – as it did to the law judge – to provide that opportunity to the respondent. And, as we further stated in Darby Aviation, I would fully expect both the FAA and respondent to engage in good faith efforts to reach such a result.[74] I therefore dissent from the majority's reversal of the law judge's choice of sanction, and would instead affirm his order as to the indefinite suspension of respondent's repair station certificate pending compliance with the FARs.

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[73] Id. at 25-26.

[74] "In sum, we assume the FAA will engage in, and Darby will cooperate with, a good faith effort to make a final determination of Darby's qualifications to continue operating." Id. at 26.

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

OFFICE OF ADMINISTRATIVE LAW JUDGES

DANIEL K. ELWELL, ACTING ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, Complainant, vs. KORNITZKY GROUP, LLC, d/b/a Aerobearings, LLC, Respondent.	*	Docket No.: SE-30476 JUDGE MULLINS

Charles Murray Courtroom
2nd Floor
Tom Vandergriff Civil Courts Building
100 North Calhoun
Fort Worth, Texas

Monday,
April 9, 2018

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

BEFORE: WILLIAM R. MULLINS
Administrative Law Judge

APPEARANCES:

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ORAL INITIAL DECISION AND ORDER

JUDGE MULLINS: We started this hearing Tuesday, April 3, and we proceeded through -- Tuesday through Friday. Each day we went till 4:30 or 5 o'clock, and now we're back here on the 9th, a Monday.

And I think today is probably the first day that I have –- well, let me back up. In our emergency hearings the Board has specified to the judges that in this 60-day window to resolve issues in an emergency case, that the judges would have 30 days to get completed and then the Board would have the other 30 days to review this matter.

Well, I'm past the 30 days. I'm into the Board's time today, but there was no way we could finish Friday, and so, to that, I just need to make a note of that for the record.

But anyway, those are the dates that the matter was on for hearing on an Emergency Order of Revocation that has revoked the repair station certificate for Kornitzky Group, LLC, doing business as AeroBearings, LLC, and the Board Docket Number is SE-30476.

The order of revocation was served on behalf of the Administrator through the Enforcement Division of the Southwest Region. The matter has been heard before me, William R. Mullins. I'm an administrative law judge for the Safety Board, and as

required in our emergency hearings, I will issue a decision at this time.

As I said, the matter came on for hearing pursuant to notice of the parties last week on Tuesday, whatever date that was; that was April 10, I guess. In any event -- sir?

MR. HAHN: I think it was the 3rd.

JUDGE MULLINS: I can't hear you. What did you say?

MR. HAHN: I think it was the 3rd, Your Honor.

JUDGE MULLINS: Oh, yes. We started on April 3 -- excuse me -- and went through the 3rd, 4th, 5th, and 6th, and we're back here on Monday, the 9th.

The Administrator was present throughout these proceedings and was represented by counsel, Ms. Yolanda Bernal, Esquire, and Ms. Theresa Dunn, Esquire, of the Enforcement Division, Southwest Region. The Respondent was throughout these proceedings represented by Mr. Derrick Hahn, Esquire, of the Dallas, Texas, area.

The parties were afforded a full opportunity to offer evidence, to call, examine, and cross-examine witnesses. In addition, the parties were afforded an opportunity to make argument in support of their respective positions.

Generally -- and as I said, my decision I will announce at this time is going to be general in nature because I don't have daily copy, and we have any number of exhibits.

But the Administrator revoked the repair station certificate

based on allegations that they were intentionally falsifying documents and that they were doing work that was not authorized by the Administrator or the available data that was available through the different manufacturers.

This repair station is a ball bearing inspection and repair station, and based on those general allegations -- and there were four different work orders that were sort of the basis for these complaints, although there was a lot going on beforehand. These were the ones that were alleged to be intentionally falsified and also work that was not in accordance with acceptable data by the Administrator.

The Administrator had -- actually the Administrator had two witnesses initially listed -- well, three, but one, the third one, wasn't called. But then there were two other witnesses who were previous principal maintenance inspectors for this repair station who had been listed on the Respondent's witness list, and the Administrator initially filed an objection to those witnesses because of some regulation that says that they can't offer opinions in cases that they've been involved in.

However, Respondent responded -- Mr. Hahn responded and said, no, they're going to be fact witnesses. And so after that, the Administrator then called them and they testified. The witnesses were Mr. Darren Pittacora, who's the current principal maintenance inspector for this Respondent; Dr. Queitzsch -- and Dr. Queitzsch is and was qualified as an expert, because he has a -- Dr. G.K.

Queitzsch, he has a doctor's degree in engineering, and he went out on this "reinspection" that occurred in May of last year, May 9 and 10 or sometime around there. Those dates are in the record.

And it was testimony and Mr. Pittacora's testimony that this work -- it certainly was Mr. Pittacora's testimony that this work was being falsified and that there wasn't sufficient data to support the work that was being done.

The previous principal maintenance inspector was Mr. Kuykendall, who was called, and Mr. Gary Watson. Their testimony was fairly brief.

Mr. Pittacora's testimony and Dr. Queitzsch's testimony and Mr. Galel, who's I guess the principal for AeroBearings or Kornitzky Group, his testimony was quite lengthy. And then there was Dr. Branzai, who's an expert in this field and who's written some documents that were admitted, who also testified for the Respondent.

There was a letter in one of these exhibits, or it was one of the exhibits, or it's numbered, from Mr. Pittacora to the Kornitzky Group, and in that letter he -- I think this letter was in March of 2017, and in that letter he said that the Administrator had inadvertently wrongfully approved this op specs that they were operating on, and I think probably that's -- that was certainly critical for anybody trying to evaluate this evidence.

Why are we here? Well, it's because there was an op specs

that was, according to Mr. Pittacora in that letter, inadvertently issued to them. So there was a suggestion from that, that they were operating under their op specs but that the FAA had somehow erred in approving that, and this approval had been clear back in 2012. So they've been operating for at least 5 years under this revised op specs, and then the thrust of the testimony was that they weren't doing it according even to the revised op specs or to their authority under all of these documents that I received.

There was -- and, again, I'm generally commenting on the evidence. There was some testimony about machinery that was being used to do this operation that had not been approved by the Administrator. Respondent's testimony was that he didn't need approval, that the OEMs from the equipment manufacturer said that he could come up with his own design, but there needs to be documentation.

And the testimony was from Mr. Galel that they didn't have that documentation because it was in a mystery computer that belonged to a deceased individual who apparently was a partner in this group or this business. And when he died, they didn't have the password and they couldn't retrieve this data, and so it wasn't available. But he said they could replicate it. But they didn't and they haven't.

He said he uses the end result to compare with what they've done in the past, and it's always been successful, but the problem with that, based on some of these documents that I've seen, is

that it says it has to be available. And certainly you'd think it'd have to be available to the operator of those machines to make sure they were using them correctly.

Again, there's a problem there, but the thrust of my comments today and for the parties, I will tell you that I don't believe the evidence -- certainly the evidence doesn't justify revocation. There was no proof of the intentional falsification.

Mr. Pittacora finally admitted on cross-examination that the entries on these forms was not false. He thought it was incomplete, but that's not intentional falsification. So the intentional falsification issue went out the -- well, was no longer for my consideration after his testimony that he thought it was incomplete.

He thought that was intentional falsification, not putting sufficient data in there, but that's not what the Board precedent is on intentional falsification. So I'll try not to talk about that anymore.

And the two concerns that I have: One is the credibility of witnesses that I'll talk about a little bit, but the other is, the bottom line for Mr. Galel and for Kornitzky Group and AeroBearings, is that the work has to be done according to the people that gave you the certificate, and they obviously don't believe the work's being done in accordance with the requirements under the manuals and the op specs.

A concern that I've had throughout this case -- and I've

tried to -- or I've not tried to; I have shared that with counsel in attempts to get this matter settled, because I think it should have been settled -- is that it is clear under the evidence here that Mr. Pittacora and Dr. Queitzsch went out on this "reinspection" with revocation in mind.

To go out -- well, first of all, I have a military background, but the only time you have a reinspection is when somebody failed the inspection. Well, the report of -- I think it's December of '15 from the previous PMIs, an investigation that had two or three people out there from the FAA, the testimony was, is everything was fine; everything was being operated according to all of their op specs and the manuals and so forth.

And then later there's some hotline complaint, and I thought it was interesting that it was -- Mr. Pittacora was very sensitive about relating what the hotline complaint was about because of its supposed anonymity. And then it occurred to me as I'm going through this over the weekend, probably the only reason you'd worry about that is that it would have to have been a complaint filed by somebody who worked at Kornitzky Group and AeroBearings, and to reveal the content would probably reveal the fact that it was somebody in house. But I don't know. That's just a speculation I made, and it's really not a factor for the decision.

But in any event, based on this hotline complaint, they scheduled a "reinspection," but the previous inspection had found everything just fine. So we have a reinspection that went on, and

then at the time of this hotline complaint, at the time of this reinspection and at no time up until the issuance of the Emergency Order of Revocation did Mr. Pittacora or Dr. Queitzsch ever consult with the previous principal maintenance inspectors, Mr. Kuykendall and Mr. Watson, and they were the folks that issued the original inspection data that said everything was just fine with the way they operated.

So the Respondent's been operating 5 years. They come out on this reinspection, and they finally find -- or not finally, but as a result of this reinspection, the Administrator proceeded with an Emergency Order of Revocation.

But amazingly, to me, to this judge, the report of that reinspection was issued the same day or the day before the Emergency Order of Revocation went out. There was never an opportunity to correct whatever the Respondent was doing wrong in the eyes of the Administrator.

As I said, Dr. Queitzsch made his report. There was a letter he'd written to one of the manufacturers trying to find out something about a hotline complaint. And the manufacturer said, well, we've never had one of these bearings fail. We've had some reports that they were doing -- they were calling it overhaul. And I still don't know what, in terms of what this shop was doing, whether that was a major overhaul or minor overhaul or whether it was a repair or an overhaul. Those are all descriptions, I guess, that are certainly beyond my pay grade, but I'm not satisfied that

that was approximately answered in all of this documentation that I have seen.

But in any event, there was never a report, even, of any bearing that failed. Now, in this same email between Dr. Queitzsch and, I don't know, one of the bearing manufacturers, Dr. Queitzsch specifically asked about removal of so much material that it rendered the bearing unairworthy and/or outside of its specification. And there was -- and the guy reported back, no, we have never had any complaints like that, and he apparently did a study of all of their reports.

So Dr. Queitzsch and Mr. Pittacora went out on this reinspection, and based on that reinspection, the Administrator proceeded with a revocation. And, again, that revocation came the day or the day after the reports from Mr. Pittacora and Dr. Queitzsch were submitted to the Respondent.

So, again, those two items plus the fact that -- those two reports coming at the same time as the revocation, and the characterization of this being a reinspection and the failure on the part of Mr. Pittacora and Dr. Queitzsch to even talk to the previous maintenance inspectors during this 5 years of apparent operation out there that seemed very appropriate and just, in my opinion, in this case -- I don't want to say destroyed their credibility, but certainly it raises question about what they were talking about, because there was no intent, from the record, that they were ever out there to try to get these folks into

compliance. And I think it's also very critical factors, there was 10 employees at this company that got shut down overnight.

And the only way that I felt, under this evidence they could ever get it corrected is for some agreement to come between the Administrator and the Respondent how to do that. And I'm satisfied there has been some effort to make those corrections or to try to get it settled, but no settlement announcement has been made to me.

I think Dr. Branzai was out there on short notice, and he didn't get to see their procedure because they couldn't -- they were shut down; they couldn't process the bearings all the way through.

I thought it was interesting, Mr. Kuykendall's testimony was that they had to get approval from the Administrator to use these machines. Well, that's sort of what each of the manufacturers suggested. Each manufacturer said, well, you can do a machine; you can make it yourself; it just has to work right. And then the manual for this repair station seemed to say, you know, it's approved by their quality manager, not by the FAA.

And Mr. Kuykendall said, no, it has to be approved by the FAA. Well, I didn't see anything in all this evidence that those machines had to be approved by the FAA, but I think the design and the function of the machine has to be recorded and available to the FAA, and it wasn't, because it went away in this computer that nobody knows.

And back to that, I'll just simply say, based on the television shows and the information I get from my grade-school grandchildren, is that you can hack those machines. I mean, there was professional hackers that could get past that password block, but I don't know.

But that's the testimony, and it is -- it was presented here today; the Administrator certainly didn't take issue with the fact that it was in a computer somewhere that no one can get into anymore.

But as soon as the Respondent was aware of that, they should have reconstructed that data and have it available in case the Administrator wants to look at it, and also have it available so that the folks working on the machine would have the data to see how it functioned and what was the specific purpose of that machine.

Those are just general comments that I have about the evidence. And, again, to the parties and anybody that might be reviewing this, if there was more time and daily copy and all of this, and if there is an appeal -- and there probably will be an appeal -- hopefully the Board will be able to have the transcript and all of these exhibits to go through and evaluate.

But from a credibility standpoint, I think that Mr. Pittacora and Dr. Queitzsch went out there with revocation in mind rather than to help this repair station. And they had -- and Mr. Pittacora had stated in this letter that they had

inadvertently issued this op specs that they have been operating on and the FAA had inspected and said was okay. So there's a real weakness in the Administrator's case there.

I think Mr. Galel was a very knowledgeable witness, and credible about his procedures that he was using and he seemed to be able to justify; although he couldn't justify not having this data on the machines, other than it had disappeared in this computer somewhere.

So let me summarize, I guess, by looking on the record at the regulatory allegations that the Administrator has filed based on this reinspection.

First of all, the Administrator alleged intentional falsification. As I said, even Mr. Pittacora finally, on cross-examination, admitted that there wasn't -- the information wasn't false. I thought at the outset of this trial it was going to be turned on the fact that all of this data had been approved up to this time by the Administrator under these inspections and that therefore although it might have been false, it certainly wasn't intentionally false.

But under the testimony of Mr. Pittacora on cross-examination, it wasn't even false. It might have been incomplete, but it certainly wasn't false. And so the Administrator did not establish by a preponderance of the evidence the regulatory allegation of intentional falsification, which would have been FAR Section 145.12(a).

The second, third, fourth, and fifth allegations had to do with maintenance requirements and maintenance work. And, again, all of that same maintenance work had been approved by the Administrator just a few months before, December of '15, I think.

And then to come and say that they weren't doing it according to the -- well, 44.13(a) says that "each performing maintenance, alteration, or preventive maintenance on any aircraft engine, propeller, or appliance shall use the methods, techniques and practices." Well, it was a real issue whether they were using the right practices or not. But I'll give the Administrator that, that obviously it's not acceptable to the Administrator if the principal maintenance inspector, Mr. Pittacora, doesn't think it is.

Now, there's no one else really here -- the doctor came in, and he testified about some -- but his testimony, as argued by counsel, was he went to the amount of material that was being removed by the bearings, but he didn't make any drawings or he didn't make any measurements, and I -- there's an issue about measurements, but that issue has to be resolved between the repair station and the Administrator.

And the same with the other allegations under Part 145 -- 43.13(a), but 145.201(b) says that the repair station may not maintain or alter any article which is rated if it requires special technical data. Well, there's a question about that, and I'll give the Administrator that; also 145.201(c)(1) and (c)(2),

but none of those allegations would justify revocation. And so what it boils down to is what would be an appropriate sanction?

And the appropriate sanction in this case, which I had hoped would be achieved by -- the appropriate sanction would be one that the parties could agree on how they were going to get these issues worked out, and that wasn't forthcoming.

I kept thinking about that old quote out of the classic movie, *Cool Hand Luke*: "What we have here is a failure to communicate." That's the bottom line in this case. And until that -- Mr. Galel and Mr. Pittacora start communicating with each other instead of beating around the bush, this matter's not ever going to get resolved.

But I think under those general comments that an appropriate sanction in this case would be suspension pending compliance.

ORDER

IT IS THEREFORE ORDERED that safety in air commerce and safety in air transportation does not require an affirmation of the Administrator's Emergency Order of Revocation as issued.

Specifically, there was no evidence of intentional falsification of any of these four documents that were entered -- and those are 3A, B, C, and D -- but there is a question, and I think it has satisfied this judge that there are questions about the procedures that are being used by this repair station that can only be resolved by compliance with and/or very specific directions from the principal maintenance inspector, and he represents the FAA.

And so therefore I think that an appropriate order in this case would be suspension of this repair station certificate pending compliance with the Administrator's direction in that regard, and IT WILL BE SO ORDERED.

Edited on
April 12, 2018

WILLIAM R. MULLINS
Administrative Law Judge

APPEAL

JUDGE MULLINS: All right. Mr. Hahn, you may appeal this order, and you may do so by filing your notice of appeal. The notice of appeal must be filed within 2 days of this date, and it should go to the National Transportation Safety Board Office of Administrative Law Judges at Room 4704 at 490 L'Enfant Plaza East, SW, Washington, D.C. 20594.

And if you do file a notice of appeal, within 5 days of that date, you need to file a brief in support of that appeal.

The Administrator also has the right to appeal this order and may do so by filing your notice of appeal within 2 days of this date, and the brief for the Administrator has those same time limits.

There may not be a transcript available in that short period of time before your brief. It will be provided to you at no cost, and probably within just a few days, and I don't know; I think it's 3 or 4 days.

What's the time limit? Do you know, Madam Court Reporter?

COURT REPORTER: Not for certain.

JUDGE MULLINS: All right. But in any event, the transcript of these proceedings is on a fast track, and it will be available, but I'm not sure it will be available in time for you to provide your briefs.

And I suppose certainly the Administrator has had since May of last year to get ready for this case, so I assume they'll have

their -- easy for them to get their briefs ready.

Respondent, you'll have to deal with those times. But I would like, Mr. Hahn, if you would step up here, and I'll hand you a written copy of your appellate rights in an emergency case.

I have a copy of that not in here, but I've got one in my briefcase, but I think the Administrator has got plenty of copies of that, I assume, in your file somewhere.

All right. Does the Respondent have any question about the order?

MR. HAHN: The only question I would have would be the affirmative defense of stale complaint. I didn't hear the Court address that.

JUDGE MULLINS: Would be -- just a minute. Would be the what?

MR. HAHN: The affirmative defense of stale complaint. I didn't hear the Court address that issue.

JUDGE MULLINS: I think there is sufficient evidence here to -- okay. The question is about the stale complaint. There was allegation of falsification, but the argument, Counsel -- and I have granted that; I think that's -- it's a very good argument, and I'm rejecting it simply because I think there is so much going on here that in an absolute right in looking at it from the Administrator's position that it might justify revocation, even without the intentional falsification, which I think would go to the issue of qualification, which would take it out of the stale

complaint.

Any other questions?

MR. HAHN: No, Your Honor.

JUDGE MULLINS: All right. Any questions from the Administrator?

MS. BERNAL: No, Your Honor.

JUDGE MULLINS: All right. Thank you, folks. I think certainly from the Respondent's standpoint it's an amazingly good job of getting ready within this short time frame, and in retrospect, I should have even given you less time, you know, because of the length of the hearing.

And the Administrator obviously has done a good job, and there's a lot of data here that I hope if there is an appeal that the Board can get through -- at least they will have the transcript, and they can review some of the testimony.

But I really would hope, for the 10 employees that are unemployed now because of this order, that you folks could set aside all your personal differences and sit down and try to work out a solution.

We'll be in recess.

(Whereupon, at 9:53 a.m., the hearing in the above-entitled matter was concluded.)

CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF:	FAA v. Kornitzky Group, LLC, d/b/a AeroBearings, LLC
DOCKET NUMBER:	SE-30476
PLACE:	Fort Worth, Texas
DATE:	April 9, 2018

was held according to the record, and that this is the original, complete, true and accurate transcript which has been transcribed to the best of my skill and ability.

_____

Donna Boardman
Official Reporter