SERVED: October 19, 2021

NTSB Order No. EA-5913

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 18th day of October, 2021

STEPHEN M. DICKSON,
Administrator,
Federal Aviation Administration,

Complainant,

v.

TODD M. DEFREITAS,

Respondent.

Docket SE-30627

ORDER DENYING PETITION FOR RECONSIDERATION

The Administrator filed a timely petition for reconsideration of NTSB Order No. EA-5906, served on September 24, 2021. The Administrator contends that our mitigation of the revocation to a 180-day suspension was erroneous. Specifically, the Administrator alleges that our decision was contrary to Board precedent and failed to afford the proper deference to the Administrator's interpretation of its sanction policy.

Section 821.50 of our Rules of Practice (49 C.F.R. part 821) governs the submission and our review of petitions for rehearing, reargument, reconsideration, or modification of an order of the Board. Section 821.50(c) requires the petitioner to explain why the Board's decision was erroneously decided and provides that the Board will not consider arguments a party could have made on appeal or in reply briefs received prior to the Board's decision. In addition, § 821.50(d) states, "[r]epetitious petitions will not be entertained by the Board, and will be summarily dismissed." In the case *sub judice*, the Administrator sets forth numerous arguments raised, or that could have been raised, in the appeal before the Board. Our rules do not require us to

consider these arguments. For clarity, we address the Administrator's key contentions below and conclude that our Opinion and Order was not erroneously decided.

The Opinion and Order is consistent with the precedent, and we have rejected the Administrator's arguments to the contrary on appeal. As we discussed in our Opinion and Order, the cases on which the Administrator relies are distinguishable from the facts of the current case. Significantly, the respondents in the cited cases, where the Board affirmed revocations for violations of 14 C.F.R. § 120.33(b), held medical certificates issued under 14 C.F.R. Part 67. We have emphasized the divergent treatment of airmen under the FAA's regulatory framework for violations of § 120.33(b) depending on the type of certificate they held: while the FAA requires being informed of a positive drug or alcohol test taken by Part 67 certificate holders and uniformly revokes the certificates of such airmen, it does not require being notified of § 120.33(b) violations by airmen who do not hold a Part 67 certificate and vests in their employer the discretion of returning such airmen to safety-sensitive duties after completion of the return-to-duty process. Given this divergence, we concluded that the Administrator's position – that the only available sanction for violation of § 120.33(b) by airmen who do not hold a Part 67 medical certificates is revocation – is unreasonable.

The Administrator posits that we failed to analyze *Administrator v. Monaco*,[1] where we noted that an airman lacks qualifications until he proves otherwise on reapplication. The Administrator suggests that this case stands for the proposition that we, as an appellate body, may not engage in the analysis of mitigating and aggravating factors in cases where an airman exhibited lack of qualifications. However, the Administrator neglects to acknowledge that, in *Monaco*, prior to reaching this conclusion and upholding the Administrator's choice of revocation, we considered the factors offered by respondent and found them not mitigating.[2] Indeed, we have more recently engaged in such analysis of mitigating factors in cases involving conduct that exhibited lack of qualifications.[3] The only difference between these cases and the instant matter is that, here, we found respondent's arguments related to the identified mitigating factors to be persuasive. In addition, the Circuit Court in *Administrator v. Siegel* did not find our consideration of mitigating factors in a case involving lack of qualifications to be arbitrary, capricious, or otherwise not in accordance with law.[4]

Also, the FAA's sanction policy contains language signifying that other sanctions beside revocation may be imposed for acts that amount to a lack of qualifications. For example, the policy states that "[t]he FAA *may* revoke any certificate when the certificate holder lacks the qualifications to hold the certificate."[5] The policy further states that "[c]onduct demonstrating a

---

[1] NTSB Order No. 2835, 1988 NTSB LEXIS 180, at 8 (1988).
[2] NTSB Order No. 2835, 1988 NTSB LEXIS 180, at 7 (1988).
[3] *See, e.g. Administrator v. Antonellis*, NTSB Order No. EA-5896 (2021); *Administrator v. Kalpin*, NTSB Order No. 5899 (2021); *Administrator v. Tarola,* NTSB Order No. EA-5858 (2019); *Administrator v. Ujvari*, NTSB Order No. 5762 (2015); *Administrator v. Jones*, NTSB Order No. 5647 (2013).
[4] 916 F.3d 1107 (D.C. Cir. 2019).
[5] FAA Order 2150.3C, Chapter 9, ¶ 8.a.(1) (2018) (emphasis added). The sanction policy also does not list the performance of safety-sensitive functions with a prohibited drug in system as

lack of care, judgment, or responsibility *generally* warrants the revocation of all certificates."[6] The policy also lists performing a safety-sensitive functions with a prohibited drug in system as one of "single acts *generally* warranting revocation."[7]

In his petition, the Administrator further contends that we owe absolute deference to the Administrator's choice of sanction, particularly in cases involving lack of qualifications, and we have no discretion to engage in the analysis of mitigating and aggravating factors. However, the ruling precedent does not afford such wholesale leniency to the Administrator. We agree with the Administrator that the Supreme Court decision in *Martin v. Occupational Safety and Health Review Commission*[8] is instructive in clarifying the extent of deference with which we review the Administrator's choice of sanction. However, under *Martin*, we must defer to the Administrator's choice of sanction only if it is reasonable.[9] We have long recognized the reasonableness standard concerning deference, a standard that is not blind and requires consideration of aggravating and mitigating factors. We have applied the reasonableness standard in our Opinion and Order, weighed the mitigating and aggravating factors, and explained at length our basis for finding the Administrator's sanction of revocation unreasonable. Having applied the appropriate level of deference and for the reasons discussed in the Opinion and Order, we reject the Administrator's position.[10]

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition is denied.

HOMENDY, Chair; LANDSBERG, Vice Chairman; GRAHAM and CHAPMAN, Members of the Board, concurred in the above order.

---

one of the acts warranting a mandatory revocation. *See* FAA Order 2150.3C, Chapter 9, ¶ 7.a.

[6] *Id.* at ¶ 8.a.(2).

[7] *Id.* at Figure 9-5(10).

[8] 499 U.S. 144 (1991).

[9] *Id.* at 158.

[10] In the October 12, 2021, reply to the Administrator's petition for reconsideration, respondent asks that we deny the Administrator's request to hold our decision in abeyance until the D.C. Circuit considers the Administrator's appeal of *Administrator v. Pham*, NTSB Order No. EA-5889 (Jan. 4, 2021) in part because of an undue delay it would cause the parties. We agree. Furthermore, granting the request may require us in the future to hold all similar petitions for reconsideration in abeyance, creating an unnecessary delay and burden for an unknown number of parties. We decline the Administrator's request.

SERVED: August 25, 2021

NTSB Order No. EA-5906

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 24th day of August, 2021

STEPHEN M. DICKSON,[1] Administrator, Federal Aviation Administration, Complainant, v. TODD M. DEFREITAS, Respondent.	Docket SE-30627

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued on April 8, 2019.[2] By that decision, the law judge determined the Administrator proved respondent violated 14 C.F.R. §120.33(b)[3] by performing safety-sensitive functions with

[1] The original caption for this matter was Daniel K. Elwell, Acting Administrator, Federal Aviation Administration v. Todd M. Defreitas.

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

[3] Under the pertinent portion of §120.33(b), no individual may perform for a certificate holder or an operator, either directly or by contract, any function listed in subpart E of this part while having a prohibited drug in his or her system.

oxycodone and oxymorphone in his system. The law judge ordered revocation of respondent's mechanic certificate and any other certificate issued to respondent under 14 C.F.R. Part 65. Respondent timely appealed. We grant respondent's appeal and reverse the law judge's decision regarding sanction and the revocation of respondent's certificate.

A. Facts

The record contains the following stipulated facts. At all times mentioned herein, respondent held a mechanic certificate with airframe and powerplant (A&P) ratings[4] and was employed as a mechanic by American Airlines (American), a company authorized to conduct operations under 14 C.F.R. Part 121.[5] Under 14 C.F.R. Part 120 and 49 C.F.R. Part 40, American implemented a drug and alcohol testing program to test safety-sensitive employees.[6] As a mechanic, respondent provided safety-sensitive functions for American and was subject to drug testing under subpart E of 14 C.F.R. Part 120.[7]

On July 10, 2018, respondent was selected for a random drug test under American's drug-testing program and provided a urine specimen to a collector for testing.[8] Respondent initialed the tamper-evident seals on the specimen bottles and certified that he had not adulterated the specimen in any manner, that each specimen bottle was sealed in his presence,

---

[4] Joint Stipulation by Complainant & Respondent at ¶1 (April 5, 2019). *See* Exh. A-30.

[5] Joint Stipulation by Complainant & Respondent at ¶¶2-3 (April 5, 2019). *See* Exh. A-3; Exh. A-4; Exh. R-15 at 5.

[6] Joint Stipulation by Complainant & Respondent at ¶4 (April 5, 2019). *See* Exh. R-2. Part 120 requires certain operators to implement a Drug and Alcohol Testing Program with the purpose of helping prevent accidents and injuries from the use of prohibited drugs by employees who perform safety-sensitive functions. 49 C.F.R. §120.33(b). Part 40 sets forth procedures for transportation workplace drug and alcohol testing programs.

[7] Joint Stipulation by Complainant & Respondent at ¶5 (April 5, 2019). Under 14 C.F.R. § 120.105, aircraft maintenance and preventative maintenance are safety-sensitive duties.

[8] *Id.* at ¶¶6-7 (April 5, 2019). *See* Exh. A-6; Exh. A-7; Exh. A-9; Exh. R-1 at 4-5.

and that the information provided on the Federal Drug Testing Custody and Control Form and the label affixed to each specimen was correct.[9] The collector forwarded respondent's urine specimen for analysis to Clinical Reference Laboratory, a laboratory certified by the Department of Health and Human Services,[10] to perform drug testing under 49 C.F.R. Part 40.[11] On July 13, 2018, respondent's urine specimen tested positive for oxycodone and oxymorphone, which are prohibited drugs under 13 C.F.R. §120.7(m) and 49 C.F.R. §40.85.[12] On July 16, 2018, American's medical review officer (MRO) conducted a verification interview with respondent and verified his drug test as positive for oxycodone and oxymorphone.[13] Thus, on July 10, 2018,

---

[9] Joint Stipulation by Complainant & Respondent at ¶¶8-9 (April 5, 2019). *See* Exh. A-8; Exh. A-9 at 3-4.

[10] *See* Exh. A-12 at 1. Drug testing laboratories in the United States are permitted to participate in DOT drug testing if certified by the DHHS under the National Laboratory Certification Program. 49 C.F.R. § 40.81(a).

[11] Joint Stipulation by Complainant & Respondent at ¶10 (April 5, 2019). The cutoff concentration for oxycodone/oxymorphone on a confirmation drug test is 100 nanograms per milliliter (ng/mL). *See* 49 C.F.R. § 40.87(c):

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. ....

An initial drug test is used to differentiate a negative specimen from one that requires testing for drug metabolites. 49 C.F.R. § 40.3. Confirmatory drug test is a second analytical procedure performed on a different aliquot (a fractional part of a specimen used for testing) of the original specimen to identify and quantify the presence of drug metabolite. 49 C.F.R. § 40.3.

[12] *Id.* at ¶¶11-12 (April 5, 2019). *See* Exh. A-10 at 5, 7-8; Exh. A-15; Exh. A-16; Exh. A-17 at 1, 3. Section 120.7(m) defines "prohibited drug" as "any of the drugs specified in 49 C.F.R. Part 40." Part 40 requires laboratories to test DOT specimen for five specific drugs, including opioids. *See* 49 C.F.R. §40.85.

[13] Joint Stipulation by Complainant & Respondent at ¶¶13-14 (April 5, 2019); Exh. A-13. An MRO is a licensed physician responsible for receiving and reviewing laboratory results and evaluating medical explanations for certain drug test results. 49 C.F.R. §40.3.

respondent performed a safety-sensitive function for an air carrier certificate holder while having a prohibited drug in his system.[14]

In addition, the record shows that, since 2014, respondent had been performing maintenance at the gates of Boston's Logan International Airport (Logan) for American.[15] In his capacity as a mechanic, he worked on an average of three aircraft per shift.[16] In 2016, respondent began taking an unprescribed opioid, hydrocodone.[17] As his consumption increased, respondent voluntarily underwent a 30-day rehabilitation program at Casa Palmera in San Diego in February-March 2017.[18] Subsequently, respondent had negative drug tests in August 2017 and February 2018.[19] However, around March 2018, he started consuming alcohol and unprescribed hydrocodone.[20] On July 10, 2018, the day of his positive test, respondent worked a full shift from 8:28 P.M. to 8:30 A.M. and performed maintenance on at least two flights.[21] He took the drug test at the beginning of his shift and returned to work after providing the urine sample.[22] The test of respondent's urine specimen from July 10, 2018, found that the quantitative amount of oxycodone in respondent's system was 1997 ng/mL and of oxymorphone – 1019 ng/mL, which is over ten times the regulatory cutoff concentration.[23]

---

[14] Joint Stipulation by Complainant & Respondent at ¶15 (April 5, 2019).

[15] Tr. at 54.

[16] *Id.* at 79; Exh. R-18 at 4.

[17] Tr. at 58-60.

[18] *Id.* at 59-62.

[19] Exh. A-25.

[20] Tr. at 63.

[21] *Id.* at 19; Exh. A-1 at 40, 42-43; Exh. A-2.

[22] Tr. at 63-64.

[23] *See* Exh. A-10 at 5, 7-8; Exh. A-17 at 1, 3. *See also supra* text accompanying note 10.

During the verification interview on July 16, 2018, respondent erroneously informed the MRO that he held a medical certificate.[24] While respondent was issued a medical third class and a student pilot certificates in 2007, they were expired by the time of his interview with the MRO.[25] Based on the belief that respondent held a current medical certificate, the MRO reported the positive test to the FAA on July 16, 2018.[26] The next day, American removed respondent from safety-sensitive functions.[27] On July 19, 2018, respondent entered into a return-to-duty program to keep his employment at American.[28] As part of this program, respondent underwent treatment at Cornerstone of Recovery Center (Cornerstone) in Tennessee from July 25, 2018, to September 22, 2018, which included detoxification, residential treatment, partial hospitalization, and an intensive outpatient program (IOP).[29] On October 5, 2018, on recommendation by American's substance abuse professional, Ellyn Kravette, and as a result of his negative drug tests, respondent returned to duty as a mechanic at Logan.[30] In the time period between his return to duty and receipt of the order of revocation in March 2019, respondent performed maintenance on approximately 240 aircraft, as well as taxi and tow work associated with aircraft

---

[24] Tr. at 65-66.

[25] *See Id.* at 55; Exh. R-4 at 1; R-5 at 1. The FAA did not revoke respondent's student pilot certificate No. 2022640 or his third class medical certificate.

[26] Exhibit R-15 at 7.

[27] *Id.*

[28] *See* Exh. R-9; Exh. R-12.

[29] Exh. R-12.

[30] *See* Tr. at 77-78; Exh. R-1 at 7; R-12; R-18 at 3. Under Part 40 regulations, an employer is vested with discretion to return an airman to duty after a substance abuse professional has determined that the airman has successfully complied with prescribed education and/or treatment. 49 CFR §40.305.

maintenance.[31] During this time, respondent was also subjected to four unannounced follow-up drug and alcohol tests, all of which were negative.[32]

B. Procedural Background

On March 8, 2019, the Administrator issued an emergency order of revocation of respondent's mechanic certificate, alleging that respondent's performance of safety-sensitive functions for an air carrier with a prohibited drug in his system violated 14 C.F.R. §120.33(b) and demonstrated a lack of qualification to hold his mechanic certificate.[33] The Administrator submitted the emergency revocation order as the complaint in this case.[34]

The law judge conducted a hearing on April 8, 2019, and issued an oral initial decision on April 9, 2019. Respondent timely appealed on April 10, 2019, and filed a supporting brief on May 24, 2019. The Administrator filed a reply brief on June 24, 2019. At the hearing before the law judge, Lacey Jones, a manager with the FAA's Drug Abatement Division, Special Investigations Branch, testified for the Administrator. Respondent's witnesses included: respondent; Bridget Kerchner, a manager of American's Drug and Alcohol Program; and Edward McCaskill, American's director of line maintenance.

1. Testimony of Lacey Jones

Ms. Jones testified that her role, which she had held since 2012, involves assigning cases out for investigation and conducting investigations, which includes

---

[31] Tr. at 29; Exh. R-18 at 4.

[32] Exh. R-21 at 3.

[33] Compl. at 2-4.

[34] On April 10, 2019, respondent waived the emergency timelines.

reviewing the enforcement investigative reports (EIR) and making sanction recommendations.[35] She testified she had previously worked on cases involving revocation of a mechanic certificate after a violation of §120.33.[36] She stated that she received the report of respondent's positive test and, after having reviewed his case, recommended revocation.[37] She stated that this case warrants revocation because the sanction was always revocation in lack of qualification cases.[38]

Ms. Jones testified that, under the FAA guidance, the appropriate sanction for performing a safety-sensitive function with a prohibited drug in the system is revocation.[39] She explained that the guidance recommends revocation because a positive test result signifies a lack of care, judgment, and responsibility to hold a mechanic certificate, which was true in respondent's case.[40] She testified that completion of the return-to-duty process under 49 C.F.R. Part 40 did not mean an airman had the care, judgment, and responsibility to hold a certificate.[41] She testified that the return-to-duty process involves the steps to take to return to work at a particular company and that the lack of qualifications was a completely separate issue.[42]

Ms. Jones testified that the MRO is charged with reporting positive drug tests to the FAA and must verify whether a donor holds any medical certificate and, based on

---

[35] Tr. at 25.

[36] *Id.* at 26.

[37] *Id.*

[38] *Id.*

[39] *Id.* at 27. *See* FAA Order 2150.3C, Chapter 9, ¶8.a.(5).

[40] Tr. at 26-27.

[41] *Id.* at 28.

[42] *Id.*

what the donor provides, the MRO determines whether to notify the FAA.[43] Ms. Jones testified that, in this case, the MRO reported that respondent held a Part 67 medical certificate.[44] She confirmed that the report submitted by the MRO regarding respondent noted "A&P mechanic and part 67 AMC."[45] She also confirmed that the FAA did not request to revoke a Part 67 certificate, only respondent's mechanic certificate with A&P ratings.[46]

Ms. Jones further testified that, anytime the FAA receives a report involving a violation of the Federal Aviation Regulations, it has an obligation to investigate.[47] She explained that an air carrier's policy dictates whether to report an A&P certified mechanic's positive drug test to the FAA and that the FAA does not require reporting of an airman certified under Part 65.[48] She acknowledged that respondent was certified under Part 65 and conceded that, while the FAA sanction guidance policy recommends revocation in positive drug test cases, there is no regulation requiring revocation in cases where a mechanic certificated under Part 65 tests positive for drugs.[49]

Ms. Jones testified that the positive drug test itself demonstrates lack of qualifications and the successful completion of the return-to-duty process under Part 40

---

[43] *Id.* at 31-32.

[44] *Id.* at 32. 14 C.F.R. Part 67 governs issuance of medical certificates for airmen.

[45] *Id.* at 32-33.

[46] *Id.* at 33.

[47] *Id.*

[48] *Id.* at 34. 14 C.F.R. Part 65 governs certification of airmen other than flight crewmembers, a category that comprises traffic control tower operators, aircraft dispatchers, mechanics, repairmen, and parachute riggers.

[49] *Id.* at 34-35.

does not restore qualifications.[50] She testified that Part 65 certificate holders would need to go through the steps to reobtain the certificate.[51] When asked what steps would be required, she stated that she was not an expert in the area of airmen certification, but that she understood they would need to requalify and take "some test."[52] She testified that respondent would be able to reapply within 12 months of the revocation.[53] She testified that all of the evidence the Administrator gathered in support of the decision in respondent's case was contained in the EIR, which did not include an interview with Ms. Kravette or anyone at the Cornerstone program.[54]

Ms. Jones was then asked why respondent was allowed to work for eight months on more than 200 aircraft if the Administrator knew respondent lacked qualifications in July 2018. She explained that the investigation was initiated in July and that investigations were thorough and required gathering all the legal evidence.[55] She testified that, in this case, the FAA relied on American to provide certain records before moving forward in the investigation and that the last records from American were received on or about January 25, 2019.[56]

Ms. Jones also testified that the FARs required an airman, who tested positive for drugs or alcohol, to be removed from safety-sensitive functions.[57] She testified that, in

---

[50] *Id.* at 35-36.

[51] *Id.* at 36-37.

[52] *Id.* at 37.

[53] *Id.*

[54] *Id.* at 40.

[55] *Id.* at 41.

[56] *Id.* at 43.

[57] *Id.* at 41-42.

this case, American did remove respondent from safety-sensitive functions and he had gone through the return-to-duty process.[58] When asked whether she warned American to remove respondent from safety-sensitive functions during the FAA's investigation, she testified that the Part 40 regulations required a return-to-duty process prior to the airman returning to safety-sensitive duties after a positive test.[59] She testified that she had not seen respondent's return-to-duty or follow-up drug tests.[60]

2. Testimony of Bridget Kerchner

Ms. Kerchner works as a manager of American's drug and alcohol program, overseeing and ensuring regulatory compliance of American's domestic drug and alcohol program, which included pilot, mechanic, and dispatcher certificates.[61] She testified that she was also the designated employer representative, who is the individual an MRO reports drugs tests to.[62] She explained that, in a mechanic's case, she was not required to report a positive test to the FAA, but that she shared the information with the mechanic's management to take appropriate action.[63] She testified that this case was reported to the FAA by the MRO.[64] She testified that the FAA requested records from her in respondent's case on three occasions and that she last provided the records in January 2019.[65]

---

[58] *Id.* at 42.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 46.

[62] *Id.* at 47.

[63] *Id.*

[64] *Id.*

[65] *Id.* at 47-48.

3. Testimony of Edward McCaskill

Mr. McCaskill has been working as American's Director of Line Maintenance at Logan and John F. Kennedy airports for five years.[66] He testified that, when a mechanic under his supervision tested positive for drugs, he would notify the employee and forward the information to his leadership team at the local airport, who would handle everything with the drug and alcohol department.[67] He stated that he passed the information regarding respondent's positive test in July 2018 to his senior manager and subsequently became aware respondent was authorized to return to work.[68] He explained he had no role in the decision to return respondent to work because this was handled through the return-to-duty program.[69] He testified he was aware of other American mechanics who had positive drug tests, completed the return-to-work process, and returned to work.[70] He testified that respondent had not been the subject of any disciplinary action by American after his return to work in October 2018.[71] He testified he was not aware of any safety concerns or reports of unsafe practices regarding respondent after October 2018.[72]

---

[66] *Id.* at 50-51.

[67] *Id.* at 51.

[68] *Id.* at 51-52.

[69] *Id.* at 52.

[70] *Id.*

[71] *Id.*

[72] *Id.* at 52.

4. Testimony of respondent

Respondent testified that he never had a positive drug test before July 10, 2018.[73] He stated that, prior to his work for American, he worked as an A&P mechanic at Air Wisconsin and Virgin America from 2011 to 2014, during which time he did not take any unprescribed drugs and his pre-employment and random drug tests were negative.[74] He also testified that, during his employment for Air Wisconsin and Virgin American, he drank four or five light beers a day, but made sure he stopped drinking 10 hours prior to his shift.[75] He testified that, when he started taking unprescribed hydrocodone in 2016 while working at American, he took extra sick or "comp" days to make sure the opioid was not in his system to avoid a positive test.[76] He stated that taking the opioid relaxed him and made him feel like he did not have a lot of problems.[77]

Respondent testified that, in February 2017, as his consumption gradually increased, he contacted Ms. Kravette, the substance abuse professional with American's Employee Assistance Program.[78] He testified that, after discussing his drinking and drug use with Ms. Kravette, she organized a treatment program.[79] He testified that he underwent a 30-day, 12-step treatment program at Casa Palmera in San Diego.[80] He explained that, after completing the program in March 2017, he chose to return to Boston,

---

[73] *Id.* at 56.

[74] *Id.* at 55-57.

[75] *Id.* at 57-58.

[76] *Id.* at 59.

[77] *Id.*

[78] *Id.*

[79] *Id.* at 60-61.

[80] *Id.* at 62.

because continuing with an intensive outpatient treatment would require him to live in San Diego.[81] He stated that his plan to remain sober involved attending Alcoholics Anonymous (AA) meetings, abstaining, and finding healthy activities.[82] He testified he pursued these steps for about 90 days, but did not get involved with AA meetings like he should have and subsequently relapsed on both alcohol and hydrocodone.[83] He testified he was not told by American during his period of relapse that he performed his job improperly.[84] He testified that, after his shift on July 10, 2018, he next worked on July 14-15 due to having days off and that he did not consume hydrocodone on either work day.[85]

Respondent testified that he learned that the test on July 10 was positive in a phone call with the MRO.[86] He testified that, during the phone call, the MRO asked what certificates respondent held and he responded that he held an A&P mechanic certificate and a student pilot license.[87] He explained that, at the time of the call, he had not verified whether his student pilot license was active and that he only wanted to be truthful.[88] He testified that he next spoke with his manager, who advised him he tested positive, and Ms. Kravette.[89] He testified that he advised Ms. Kravette of his frequency of drug use and

---

[81] *Id.* at 61-62.

[82] *Id.* at 62.

[83] *Id.* at 62-63.

[84] *Id.* at 64.

[85] *Id.* at 64-65.

[86] *Id.* at 65.

[87] *Id.* at 65-66.

[88] *Id.* at 66.

[89] *Id.*

then met with her two days later in New York, where they discussed his drug and alcohol abuse and treatment facilities.[90]

Respondent testified he wanted to get treatment because he wanted to get better and keep his job.[91] He testified that he chose Cornerstone, where he underwent a five-day detoxification and then a very intense recovery renewal program, consisting of 12-hour days of group therapy and individual therapy with a psychiatrist, a spiritual advisor, and a licensed therapist.[92] Throughout his stay, respondent also participated in an aviation professionals program, led by a counselor who was a former pilot and held an A&P mechanic license, involving discussions on relapse prevention and the issue of addiction in aviation.[93]

Compared to Casa Palmera, which was a "luxury" center, respondent explained that Cornerstone was much more intense because it was double the length of the stay and the days were much longer.[94] He testified that the ratio of counselors to patients at Cornerstone was higher, and the majority were former addicts and in recovery themselves.[95] Respondent testified that he transitioned to the IOP for professionals after the 30-day recovery renewal program, which involved living at the facility but having more freedom and a nine-to-five day.[96] He testified that the purpose of the IOP was to

---

[90] *Id.* at 66-68.

[91] *Id.* at 68.

[92] *Id.* at 68-71. *See* Exh. R-10.

[93] Tr. at 70.

[94] *Id.* at 71.

[95] *Id.*

[96] *Id.* at 73-74.

bridge a patient into going home and getting back to life.[97] He testified he continued with the aviation professionals meetings while in the IOP,[98] and that he also attended AA meetings at least five times a week and worked on avoiding a relapse.[99] Respondent stated that the leadership at Cornerstone taught him to undergo a 12-step program, change friends and associations, avoid going to bars, and develop relationships.[100]

During his stay at Cornerstone, respondent concluded that his primary problem was alcohol and not drugs.[101] After completing the Casa Palmera program, respondent held the mistaken belief that he could drink socially once he stopped taking pills.[102] He testified that, at the end of his stay at Cornerstone, he had a conference call with his counselor and Ms. Kravette, where he discussed his personal recovery plan on discharge.[103] He testified that the plan included therapy, AA meetings, and taking Wellbutrin for depression, Adderall for attention deficit disorder; and naltrexone for opioid use disorder.[104] He testified that naltrexone helped with opioid cravings and that he was currently taking these medications.[105]

---

[97] *Id.* at 73.

[98] *Id.*

[99] *Id.*

[100] *Id.* at 73-74.

[101] *Id.* at 74.

[102] *Id.*

[103] *Id.* at 74-75. *See* Exh. R-11.

[104] *Id.* at 75-76.

[105] *Id.* at 76.

Respondent testified that, after leaving Cornerstone, he adhered to his stated recovery plan.[106] After his return to work on October 5, 2018, and before receiving the FAA's revocation order, respondent indicated that no one at American or the FAA told him he engaged in unsafe practices nor was he disciplined.[107] Respondent testified that he received a phone call from the FAA investigator regarding his alleged violation of 14 C.F.R. §120.33(b) and provided the investigator with relevant information.[108] He testified that he then received an emergency order of revocation in March 2019 and mailed his mechanic certificate to the FAA.[109] He testified that he did not return to work at American after he received the revocation order because American would not allow him to perform line maintenance without a certificate ,[110] but that as of the hearing, he was still an active American employee.[111]

Respondent testified that, since he was discharged from Cornerstone, he had not consumed alcohol or taken any unprescribed drugs and that he had been taking his prescribed medications.[112] When asked why anyone should have confidence he would not relapse again, he testified that he had changed through the 12-step AA program.[113] He explained that he felt like he had to relapse for something severe like this to happen to

---

[106] *Id.* at 76-77.

[107] *Id.* at 78.

[108] *Id.* at 79-80.

[109] *Id.* at 80.

[110] *Id.* at 81.

[111] *Id.*

[112] *Id.* at 81-82.

[113] *Id.* at 82.

give him the willingness to change and to fully accept his addiction.[114] He testified that he also realized that he needed to be in recovery for the rest of his life and not just a specific amount of time.[115]

On cross-examination, respondent testified that he could appreciate the reasons the FAA had regulations prohibiting its pilots, mechanics, and dispatchers from performing their duties while under the influence of drugs or alcohol, because they had important jobs where people's lives were at stake and the FAA did not want impaired people working on or operating around aircraft.[116] He explained he did not go to rehab when he relapsed in February 2018 because he did not feel he was ready and was scared.[117] When asked whether he would be here had he gone to rehab at that time, he testified that he could not speak to that.[118] He testified that he was most worried about relapsing again and that his job was important to him.[119] When asked whether he could have stopped instead of continuing to use until the random drug test, he testified that most addicts could not just stop.[120]

C. Law Judge's Oral Initial Decision

In the oral initial decision on June 12, 2018, the law judge determined that the Administrator proved the regulatory violation of 14 C.F.R. §120.33(b) as alleged by a

---

[114] *Id.*

[115] *Id.*

[116] *Id.* at 83-84.

[117] *Id.* at 84.

[118] *Id.* at 85.

[119] *Id.*

[120] *Id.* at 84-85.

preponderance of the evidence.[121] In making this determination, the law judge summarized the procedural history of the case; the facts underlying the case; the Administrator's allegations and the regulatory violations alleged in the complaint; respondent's contentions; the admitted exhibits; the testimony of the witnesses and respondent; and the relevant case law.[122] The law judge found that a positive test for a person employed in a drug-sensitive environment and subject to drug testing showed a lack of care, judgment, and responsibility, which equated to a lack of qualification.[123] The law judge also noted that the Board did not want to set a precedent that completing a rehabilitation program absolved an airman from a revocation, because this would not serve safety in air commerce and transportation.[124] The law judge concluded that a revocation and the finding of lack of qualification was the only option in a case where an airman has an addiction issue and tests positive while working a safety-sensitive job.[125]

D. Issues on Appeal

On appeal, respondent contends that the Administrator failed to show respondent lacked qualifications to hold his certificate and that the law judge erred in failing to consider mitigating factors in determining the sanction.[126] Specifically, respondent contends that the FAA's assertion respondent lacks a qualification to hold his mechanic certificate simply because of the single positive drug test is arbitrary and capricious because of the divergent manner in which the FAA

---

[121] Oral Initial Decision at 108.

[122] *Id.* at 100-106.

[123] *Id.* at 106-107.

[124] *Id.* at 107.

[125] *Id.*

[126] Appeal Br. at 11-16.

assesses the risks associated with substance abuse for mechanics versus other airmen.[127] Respondent also argues the law judge erred by failing to evaluate all the facts in determining whether respondent lacked qualifications, particularly respondent's compliance with the Part 40 return-to-duty process.[128] Respondent further argues that the law judge erred by ignoring any mitigating factors, such as the completion of the return-to-duty program and his safe and skilled performance thereafter, and that the Administrator presented no aggravating factors.[129] The Administrator argues the law judge committed no error and opposes respondent's arguments for reversal.

2. Decision

While we give deference to the law judge's rulings on certain issues, such as credibility determinations,[130] we review the law judge's decision *de novo*.[131]

A. Lack of Qualifications

The Administrator argues that respondent showed he lacked the requisite care, judgment, and responsibility required of a mechanic certificate holder when he performed safety-sensitive duties on July 10, 2018, with prohibited drugs – oxycodone and oxymorphone – in his system.[132] Respondent contends that the Administrator failed to show respondent lacked qualifications to

---

[127] *Id.* at 11-12.

[128] *Id.* at 12-14.

[129] *Id.* at 15-16.

[130] *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).

[131] *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).

[132] Reply Br. at 7-8.

exercise the privileges of his mechanic certificate, because had respondent not mistakenly informed the MRO that he held a Part 67 medical certificate, the FAA would not have learned of the positive drug test and he would have continued working as a mechanic for American.[133] We disagree with respondent's contention.

Both the FAA regulations and American's Substance Abuse Policy require an MRO to report positive drug test results for holders of medical certificates issued under 14 C.F.R. Part 67.[134] Specifically, the regulations require an MRO to ask the donor to answer whether he or she holds an airman medical certificate issued under 14 C.F.R. Part 67; if the donor answers in the affirmative, the MRO must report the individual to the Federal Air Surgeon.[135] As such, the MRO's determination whether to report such a donor depends on the donor's response to the question whether he or she holds a medical certificate. The regulations rightfully place the burden of disclosure on the donor, since the donor is best positioned to know what certificates he or she holds. Here, after respondent held himself out as holding both a mechanic certificate and a medical certificate, albeit erroneously, the American's MRO acted in compliance with the regulations and his employer's policy when he reported respondent's positive drug test to the Federal Air Surgeon. Thus, respondent's mistaken reporting does not undercut the MRO's duty to report or the FAA's duty to investigate and commence the enforcement action against respondent based on the information he himself provided.

Respondent also contends that the Administrator failed to show respondent lacked qualifications to exercise the privileges of his mechanic certificate because of the divergent

---

[133] Appeal Br. at 15.

[134] *See* Exhs. R-6 at 1; R-1 at 14.

[135] 14 CFR § 120.113(d)(1). *See also* Tr. at 31-32.

manner in assessing the risks associated with substance abuse among the two professions: the FAA regulations do not require employers to report mechanics in the same manner as it requires reporting for pilots. Indeed, the FAA's website states that employers *must* report all verified positive drug test results for any Part 67 medical certificate holder, but that employers *may* report the same for all other employees.[136] The FAA regulations also appear to treat Part 67 and Part 65 certificate holders differently when it comes to substance abuse. While Part 67 certificate holders are expressly prohibited from having a substance dependence or engaging in substance abuse for the previous two years,[137] the regulations governing mechanics do not include the same prohibition.[138] And, the rules governing certification of mechanics do not encompass a requirement to hold a medical certificate issued under 14 CFR Part 67.[139]

Thus, we agree with respondent that the FAA appears to regard mechanics versus airmen who are Part 67 medical certificate holders differently in terms of risks from substance abuse. However, we disagree with respondent that this divergence signifies that any mechanic with a positive drug or alcohol test and, therefore, in violation of 14 C.F.R. § 120.33(b), cannot be found to lack qualifications in exercising the privileges of his certificate. To the contrary, there is ample precedent in NTSB case law that any airman, regardless of what Part he or she is certified under, lacks the degree of care, judgment, and responsibility required of a certificate holder if he or she conducts safety-sensitive functions while under the influence of alcohol or drugs. [140] Here,

[136] *See* Exh. R-6 at 1.

[137] *See* 14 CFR §67.107

[138] *See* 14 CFR Part 65, Subpart D.

[139] *See* 14 CFR Part 65, Subpart D, §§ 65.71-65.91.

[140] *See e.g., Administrator v. Berger,* Docket No. SE-17971 (2015) (holding that respondent lacked the qualifications to hold his mechanic certificate when he performed safety-sensitive duties with alcohol in his system); *Administrator v. Magro,* NTSB Order No. EA-5515 (2010) (affirming the law judge's finding that respondent lacked the qualifications to hold his mechanic

respondent consumed alcohol and unprescribed hydrocodone for approximately four months, between March 2018 and July 2018, while performing his duties as a mechanic at one of the largest U.S. airports.[141] Also, on July 10, 2018, the day of his positive drug test, he performed maintenance on two flights while having a concentration of oxycodone and oxymorphone in his system that was over ten times the regulatory cutoff.[142] Respondent showed a clear lapse in judgment when he consumed the unprescribed opioids and disregarded the potential effect of this substance on his performance of safety-sensitive duty. As such, we affirm the law judge's finding that respondent showed a lack of care, judgment, and responsibility required of his mechanic certificate.

B. Sanction

The Administrator contends that revocation is appropriate in cases where an airman exhibits a lack of care, judgment, and responsibility required of his or her certificate.[143] The Administrator relies on the FAA's sanction guidance, FAA Order 2150.3C, enumerating certain acts of misconduct that generally show the certificate holder does not possess the care, judgment, or responsibility to hold a certificate.[144] One such act is performing a safety-sensitive function

---

and medical certificates when he performed safety-sensitive duties with marijuana in his system); *Administrator v. Strickler*, NTSB Order No. EA-5874 (2020) (affirming the law judge's finding that respondent lacked the qualifications to hold his airline transport pilot and medical certificates when he performed safety-sensitive functions with marijuana in his system); *Administrator v. Majkrzak*, Docket No. SE-30468 (2020) (holding respondent lacked the qualifications to hold his aircraft dispatcher certificate when he performed safety-sensitive functions with marijuana in his system).

[141] *See* Tr. at 63.

[142] *See* Exh. A-10 at 5, 7-8; Exh. A-17 at 1, 3. *See also supra* text accompanying note 11.

[143] Reply Br. at 9.

[144] *See* Exh. A-32, pages 1-2.

with a prohibited drug in your system, in violation of §120.33(b).[145] Thus, the Administrator contends that §120.33(b) is a strict liability offense, such that any facts outside of the positive drug test while performing safety-sensitive duties are irrelevant, and the positive drug test alone warrants a revocation.[146] In support, the Administrator cites to *Administrator v. Stanberry*, where the Board noted that, where an airman is found to lack qualifications, revocation is warranted and mitigating factors are not relevant.[147]

However, the *Stanberry* case is inapplicable, because it was decided prior to the enactment of the Pilot's Bill of Rights, and because the Administrator's position fails to consider the D.C. Circuit's recent ruling in *Siegel v. Administrator of the FAA*, which suggested that the Board must evaluate mitigating factors regarding sanctions, even when the violation is one for which the FAA expressly states revocation is warranted.[148] In the Pilot's Bill of Rights, Congress struck the statutory language previously requiring the NTSB to defer to the Administrator's choice of sanction in enforcement actions. After the Pilot's Bill of Rights, we apply principles of judicial deference to the interpretation of laws, regulations, and policies that the Administrator carries out in accordance with the United States Supreme Court's ruling in *Martin v. Occupational Safety and Health Review Commission*.[149] We must conduct a reasonableness inquiry when determining whether an agency's statutory interpretation is entitled to deference.[150]

---

[145] *Id.*

[146] *See* Reply Br. at 7-10. *See also* Tr. at 26, 28-29.

[147] NTSB Order No. EA-3308, 1991 NTSB LEXIS 64 (1991).

[148] *See* 439 U.S. App. D.C. 466, 470, 916 F.3d 1107, 1111 (2019)

[149] 499 U.S. 144 (1991).

[150] *Martin*, 499 U.S. at 145, 150-158. In *Martin*, the issue was whether, in situations involving interpretations of ambiguous regulations, the Secretary of Labor, who set and enforced the workplace health and safety standards, was entitled to deference by the OSHRC, a body carrying

Whether the Administrator's choice of sanction is reasonable is case-specific and based on the facts and circumstances adduced at the hearing and warrants an evaluation of aggravating and mitigating factors.[151]

The Administrator's argument that the FAA revokes certificates of any airman who violates § 120.33(b) is ineffective. In support of this contention, the Administrator cites to three cases where the Board affirmed revocation of certificates for violations of § 120.33(b).[152] However, in all three cases, respondents held medical certificates, issued under 14 C.F.R. Part 67. In this regard, the FAA's asserted zero tolerance policy for alcohol and drug violations under § 120.33(b) appears inconsistent. The FAA uniformly revokes certificates of airmen who hold medical certificates and have a verified positive drug or alcohol test above the regulatory limit. Yet, in the case of a mechanic who does not hold a medical certificate, the FAA does not even require the employer to inform it of the mechanic's positive drug test.

It is of great significance that the FAA holds the airmen with medical certificates to a higher standard than airmen who hold only a Part 65 certificate, such as a mechanic. If the FAA, as it contends here, treated all cases with positive drug tests as a strict liability offense warranting revocation, it would require employers to report each case of a positive drug test, regardless of the type of certificate the violator holds. Instead, the FAA vests employers with discretion to

---

out adjudicatory functions. The Court held that "a reviewing court should give effect to the agency's interpretation so long as it is reasonable." 499 U.S. at 146.

[151] *See Administrator v. Jones*, NTSB Order No. EA-5647 at 21 n.62 (2013). *See also Administrator v. Hackshaw*, NTSB Order No. EA-5510 (2010) (*recon. denied*, NTSB Order No. EA-5522 (2010)); *Administrator v. Simmons*, NTSB Order No. EA-5535 (2010); *Siegel v. Administrator,* 916 F.3d 1107 (D.C. Cir. 2019).

[152] *See Administrator v. Gabbard*, NTSB Order No. EA-5293 (2007); *Administrator v. Zumarraga*, NTSB Order No. EA-5618 (2012); *Administrator v. Magro*, NTSB Order No. EA-5515 (2010).

return a Part 65 certificate holder who does not hold a medical certificate, such as a mechanic, to duty after completing the employer's return-to-duty process.[153] Therefore, in those cases, the FAA's regulatory framework allows consideration of a successful completion of the return-to-duty process and return to safety-sensitive duties as a mitigating factor.

Here, the Administrator relies solely on the positive test in support of the revocation and does not offer any aggravating factors.[154] On the other hand, the respondent offers his completion of the return-to-duty program as mitigating.[155] On receipt of respondent's positive drug test, American promptly removed him from safety-sensitive duties.[156] Respondent then underwent an intensive, 60-day rehabilitation program and was returned to safety-sensitive duties by American's substance abuse professional, an individual entrusted to make such determination by the regulations.[157] Subsequently, respondent tested negative on four unannounced drug and alcohol tests between October 2018 and April 2019.[158] He has also been attending AA meetings and been compliant with ongoing psychological and pharmaceutical treatment.[159] To find that these events are not mitigating and revoke respondent's mechanic certificate would render the return-to-duty process for Part 65 certificate holders meaningless.

---

[153] *See* 49 C.F.R. §40.305. *Also see generally* 49 C.F.R. Part 40, Subpart O for the steps an airman must take to return to the performance of safety-sensitive duties after a positive drug or alcohol test.

[154] *See* Reply Br. at 9-15.

[155] *See* Appeal Br. at 15-16.

[156] *See* Exh. R-15 at 7.

[157] *See* 49 C.F.R. Part 40, Subpart O. *Also see* Exh. R-21 at 2.

[158] *See* Exh. R-21 at 3.

[159] Tr. at 75-76.

Although the case law is contradictory on this issue, there is sufficient precedent finding completion of a return-to-duty process to be a mitigating factor. In *Administrator v. Majkrzak*, a case involving an aircraft dispatcher certificate holder, the law judge found completion of a return-to-duty process not mitigating.[160] On appeal to the Board, the respondent in *Majkrzak* requested a modification of the date and length of revocation and did not appeal the law judge's findings of fact or sanction determination.[161] As such, the Board has not yet expressly considered whether completion of a return-to-duty process serves as a mitigating factor. However, at the administrative law judge's level, the same law judge who decided *Majkrzak* held in an earlier case of *Administrator v. Henry* that completion of a return-to-duty program was a mitigating factor and reduced the sanction of revocation to a 180-day suspension.[162] In addition, in *Administrator v. Berger*, a case involving a mechanic certificate holder, a different law judge considered completion of the return-to-duty program to be a mitigating factor, lowering the sanction from revocation to a 180-day suspension.[163]

While *Henry* and *Berger* are not binding on the Board, they are persuasive. The *Berger* case is particularly persuasive because the facts are similar to the current case. In *Berger*, after being subjected to a random drug and alcohol test shortly after reporting for duty as a mechanic for United Parcel Service, respondent tested positive for having an alcohol concentration greater

[160] Docket No. SE-30468 (2018).

[161] *See* NTSB Order No. EA-5881 (2020).

[162] *See* Docket No. SE-19769 (2015) (noting that "to ignore those matters in mitigation…would undermine the purpose of the return-to-duty program and render meaningless the opinions of the certified medical and substance abuse professionals" who determined that respondent was medically qualified to return to flying).

[163] *See* Docket No. SE-17971, 2007 WL 1233699 (NTSB) (2007).

than the regulatory limit.[164] Like here, respondent in that case also held a mechanic certificate, did not hold a medical certificate, and successfully completed the return-to-duty program.[165] The law judge found that, in such a case, the FAA's policy permitted him a discretion to impose a sanction less than revocation.[166] In arriving at this conclusion, the law judge gave a detailed description of the regulatory framework for returning airmen to safety-sensitive duties after a positive drug or alcohol test and noted the varying risks the FAA assigned to airmen depending on the type of certificate they held.[167] The law judge's reasoning in *Berger* is persuasive, and we find no reason to depart from it.

Given the FAA's own regulatory framework allowing an employer to return to safety-sensitive duties an airman who does not hold medical certificate and without an obligation to notify the FAA of the positive drug test, we find the FAA's argument that revocation is the only appropriate sanction for every airman with a positive drug test, regardless of the type of certificate they hold, unpersuasive. Therefore, we find that, in those cases where an airman who does not hold a medical certificate successfully completes a return-to-duty process after a positive drug or alcohol test, the successful completion of the return-to-duty process is mitigating.

The FAA sanction guidance policy states that performance of a safety-sensitive function with a prohibited drug in system generally warrants a revocation and does not consider any other penalty for such violation.[168] However, in considering mitigating factors, the policy identifies

---

[164] *Id.*

[165] *Id.*

[166] *Id.*

[167] *Id.*

[168] FAA Order 2150.3C, Chapter 9, ¶ 8.a.(5) (2020).

three severity levels of violations, with level 3 associated with increased likelihood of harm to persons or property.[169] The policy also advises consideration of the culpability of the violator – careless, reckless, or intentional – with intentional culpability the most severe.[170] The sanction matrix, then, considers the severity level 3 and intentional conduct to warrant the maximum penalty.[171] The maximum penalty for an individual certificate holder is 150-270 days.[172] Although respondent here completed American's return-to-duty program and has been compliant with treatment, he still knowingly and deliberately engaged in prohibited substance abuse while performing safety-sensitive duties as a mechanic at the gates of one of the largest airports in the United States. A penalty in the maximum range is warranted for such a breach of trust and the violation of the conditions of his certificate to deter respondent and others performing safety-sensitive duties. The law judges in *Henry* and *Berger* reduced the sanction from revocation to a 180-day suspension, which falls within the maximum penalty range. Thus, we reverse the law judge's decision with respect to sanction and mitigate respondent's sanction to a 180-day suspension.

---

[169] *Id.* at ¶ 6.c.

[170] *Id.* at ¶ 6.d.

[171] *Id.* at ¶ 6.e., Figure 9-1.

[172] *Id.* at ¶ 6.f., Figure 9-2.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted;

2. The law judge's oral initial decision is reversed with regard to sanction;

3. The Administrator's revocation of respondent's mechanic certificate with A&P ratings is reversed;

4. Respondent's mechanic certificate with A&P ratings is suspended for 180 days.

HOMENDY, Chair; LANDSBERG, Vice Chairman; GRAHAM and CHAPMAN, Members of the Board, concurred in the above opinion and order.