

SERVED: April 12, 2023

NTSB Order No. EA-5949

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 5th day of April, 2023

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BILLY NOLEN, ¹)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	
	v.)	Docket SE-30780
)	
BRADLEY JOHNS,)	
)	
	Respondent.)	
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OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Chief Administrative Law Judge Alfonso J. Montaña, issued on January 27, 2022.² By that decision, the law judge determined that the

¹ The original caption for this matter was *Stephen M. Dickson, Administrator, Federal Aviation Administration v. Bradley Johns*.

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

Administrator proved respondent violated 14 C.F.R. §§ 67.403(a)(1),³ 67.403(b),⁴ 67.403(c).⁵

The law judge ordered revocation of respondent's airline transport pilot (ATP) certificate and all airman medical certifications. For the reasons set forth below, we deny respondent's appeal.

A. Facts

Respondent is an Air Force veteran who received medical disability compensation from the Department of Veterans Affairs (VA) for rhinitis and bilateral shoulder dislocations between June 2002 and October 2009 and for obstructive sleep apnea (OSA), among other conditions, between May 2013 and April 2019.⁶ From December 2008 to June 2018, respondent submitted 11 applications for a first-class medical certificate and did not report receiving any VA disability benefits.⁷ Specifically, on the aforementioned medical certification applications, respondent checked "no" in response to Question 18.y., which asks whether he had or presently has "[m]edical disability benefits."⁸ Additionally, on Item 20 of the application, respondent certified by signature that all statements provided by him were complete and true to the best of his knowledge.⁹ The FAA issued to respondent medical certificates in response to the 11 applications dated between December 2008 and June 2018.

In 2018, the FAA identified the discrepancies between respondent's response to Question 18.y. and his receipt of the VA disability benefits as a result of a joint investigative initiative

³ Section 67.403(a)(1) prohibits, in pertinent part, an intentionally false statement on any application for a medical certificate.

⁴ Section 67.403(b) states, in pertinent part, that a violation of § 67.403(a)(1) is a basis for suspending or revoking all airman and medical certificates and ratings held by that person.

⁵ Section 67.403(c) states, in pertinent part, that an incorrect statement, upon which the FAA relied, made in support of an application for a medical certificate may serve as a basis for suspending or revoking a medical certificate.

⁶ Compl. at 1-2, ¶¶ 3-6; Second Am. Answer at 1, ¶¶ 3-6.

⁷ Exhs. A-10 at 111-275.

⁸ Compl. at 2, ¶ 8; Exh. A-10.

⁹ Exh. A-10.

between the Offices of Inspector General (OIG) of the VA and the Department of Transportation (DOT).¹⁰ The initiative was aimed at identifying veterans who were active pilots and who were also receiving service-connected disability benefits.¹¹ On August 27 and August 30, 2018, Malcolm Fredrick, a Special Agent with the VA OIG, interviewed respondent about his receipt of the VA disability benefits.¹² On August 31, 2018, respondent contacted the Aviation Medicine Advisory Service (AMAS) to assist him in reporting his evaluation for sleep apnea and his VA disability rating.¹³ On April 17, 2019, AMAS submitted to the FAA on respondent's behalf the VA's rating decisions and a cover letter, explaining that respondent requested AMAS's assistance in reporting the negative results of respondent's OSA testing and requesting a confirmation of respondent's eligibility for a first class medical certificate.¹⁴

B. Procedural Background

On March 4, 2020, the Administrator issued an emergency order, which became the complaint in this case, revoking respondent's ATP certificate and airman medical certificates issued on June 6, 2018, and June 24, 2019, and any other airman certificates and unexpired airman medical certificates.¹⁵ The Administrator alleged that respondent violated 14 C.F.R. § 67.403(a)(1) by intentionally falsifying his answer to Question 18.y. on his medical certificate applications.¹⁶ Respondent filed an answer to the complaint on March 13, 2020, and subsequently amended his answer on May 6, 2020, and again on January 7, 2022, wherein he denied that his responses to Question 18.y. were false or intentionally false. The law judge

¹⁰ See Tr. at 83.

¹¹ See *id.*

¹² See Tr. at 82-83.

¹³ Exh. A-10 at 178.

¹⁴ *Id.* at 179.

¹⁵ Compl. at 3. Respondent waived emergency procedures on March 6, 2020.

¹⁶ Compl. at 3.

conducted a hearing on January 25, 2022. At the hearing, the Administrator called as witnesses Mr. Frederick and David G. Schall, M.D., an FAA Certification Physician with the Civil Aerospace Medical Institute. Respondent testified on his own behalf and did not call any witnesses.

1. Testimony of David G. Schall, M.D.

Dr. Schall testified as an expert in the FAA Medical Certification Process.¹⁷ During his career with the FAA, he reviewed over 20,000 Airman Certification Waiver cases.¹⁸ Dr. Schall testified that respondent's OSA was a safety concern from an aero-medical standpoint.¹⁹ He explained that the NTSB directed the FAA to consider screening airmen for OSA because of the significant impact of this condition on the trucking industry in terms of economic and human loss.²⁰ Dr. Schall indicated that, had respondent reported receiving medical disability benefits for his OSA, the FAA would have asked for respondent's sleep study, a narrative from the treating physician, and a signed statement from respondent that his use of continuous positive airway pressure machine was effective.²¹ Dr. Schall explained that the FAA must ascertain that the OSA "is accurately treated and mitigated, so that the risk of fatigue and/or further morbidity is mitigated."²²

Dr. Schall acknowledged that the instructions to the airman medical certificate application in paper form did not specifically address the information requested in response to Question 18.y., did not define "medical disability benefits," and did not guide applicants on what

¹⁷ Tr. at 44.

¹⁸ *Id.* at 38.

¹⁹ *Id.* at 45.

²⁰ *Id.*

²¹ Tr. at 48-49.

²² *Id.* at 46.

to do if they had any questions about the application.²³ Dr. Schall indicated that the MedXpress airman certificate application update included the definition of “medical disability benefits,” but did not recall when the update had occurred.²⁴ Dr. Schall confirmed that the Guide for Aviation Medical Examiners allowed the FAA to contact the VA to verify whether an airman received a disability benefit that “may present a conflict in issuing an FAA medical certificate.”²⁵

Dr. Schall further testified that if an airman forgot to report OSA on a medical certificate application, the FAA would require a signed letter documenting the error and supporting medical documentation.²⁶ Dr. Schall explained that the FAA considered several factors when deciding whether to accept or reject an amendment to a medical certificate application: the amount of time that has lapsed from the time of the application until the time of the disclosure of the medical condition; a pattern of falsification of past medical certificate applications; the egregiousness of the falsification; and the class of the applicant's airman certificate. He explained that a holder of a first-class airman certificate is held to a higher standard than a holder of a second-class airman certificate.²⁷

2. *Testimony of Malcolm Frederick*

Mr. Frederick testified that joint investigative initiative between the VA and the DOT was “looking for inconsistencies that may potentially lead to fraud.”²⁸ Mr. Frederick stated that he interviewed respondent on August 27 and August 30, 2018, about respondent’s receipt of VA disability benefits for OSA and his failure to report it on the FAA medical certificate

²³ *Id.* at 53-55.

²⁴ *Id.* at 54.

²⁵ *Id.* at 56; Exh. A-31 at 41.

²⁶ Tr. at 58.

²⁷ *Id.* at 59, 61.

²⁸ *Id.* at 83.

applications.²⁹ Mr. Frederick indicated that respondent told him he answered “no” to Question 18.y. because he did not equate “medical disability benefits” with “VA disability benefits.”³⁰ Mr. Frederick did not find respondent deceptive in his explanation about why he answered “no.”³¹

3. Testimony of respondent

Respondent testified to having an ATP certificate with a private, single engine land, and other ratings.³² He graduated from the Air Force Academy and was a Flight Commander in the military reserves.³³ Post service, he was an instructor pilot for the Boeing Company and flew for Delta Air Lines.³⁴ Respondent indicated that he answered “no” in response to Question 18.y. because he considered himself “a fairly healthy adult male” and thus did not consider himself as disabled as military veterans who are wheelchair bound.³⁵

Respondent testified that the American Legion assisted him in submitting his VA benefit claims.³⁶ Respondent confirmed that he submitted VA medical disability claims on three separate occasions and, in response, received Rating Decision letters from the VA, which explained the benefits he would be receiving.³⁷ Respondent stated the VA awarded him compensation for OSA when he had no such diagnosis at the time.³⁸ He explained that he believed the VA awarded him the compensation in appreciation for his military service and to ensure he received future care at VA medical facilities.³⁹ He further explained that he did not

²⁹ *Id.* at 82-85.

³⁰ *Id.* at 85, 90, 94.

³¹ *Id.* at 93.

³² *Id.* at 104.

³³ *Id.* at 104, 107.

³⁴ *Id.* at 109.

³⁵ *Id.* at 111-112.

³⁶ *Id.* at 149.

³⁷ *Id.* at 133-134.

³⁸ *Id.* at 155, 171.

³⁹ *Id.* at 156.

believe the VA benefits were based on “any kind of disability” because the VA discontinued the payments when he returned to duty as a reservist and resumed them when he was off the reserve duty.⁴⁰ He stated that that is why he believed he was truthful and answered the questions correctly when he submitted the medical certificate applications at issue.⁴¹

Respondent also testified that he misunderstood Question 18.y., believing it only referred to Social Security Administration (SSA) benefits.⁴² He explained he believed the SSA benefits were the only type of disability benefits one can receive because “you mark them on your taxes, and you receive disability from the Government.”⁴³ He denied anyone directing him how to answer Question 18.y.⁴⁴ He stated that had the medical certificate application form asked if he received VA benefits, he would have answered affirmatively.⁴⁵

Respondent testified he first realized he had been answering Question 18.y. incorrectly when was interviewed by Mr. Frederick.⁴⁶ Respondent indicated that he contacted AMAS on August 31, 2018, to amend his most recent medical certificate application and to provide information and documentation going back to 2003.⁴⁷ He denied contacting his AME.⁴⁸ He confirmed that the AMAS submission did not mention the word “amendment” and did not specify all the past medical certificate applications he intended to amend.⁴⁹ He explained that he was not familiar with the process or the language required for amending his application as he

⁴⁰ *Id.* at 113-114, 162.

⁴¹ *Id.* at 117.

⁴² *Id.* at 161.

⁴³ *Id.*

⁴⁴ *Id.* at 173.

⁴⁵ *Id.* at 120.

⁴⁶ *Id.* at 117, 168, 174-175.

⁴⁷ *Id.* at 120, 167.

⁴⁸ *Id.* at 124-125.

⁴⁹ *Id.* at 168.

“was simply seeking the advice and...to basically correct the mistakes that I had made.”⁵⁰ He stated that he did not know if he could amend his application.⁵¹

C. Law Judge’s Written Decision

In the oral initial decision, the law judge determined that the Administrator proved by a preponderance of reliable, probative, and credible evidence that respondent violated 14 C.F.R. §§ 67.403(a)(1), 67.403(b), 67.403(c).⁵² In making this determination, the law judge summarized the regulatory violations in the complaint, noted respondent’s admissions and denials in his answer and testimony, noted the admitted exhibits, summarized witness testimony, assessed the credibility of the witnesses and respondent, and applied the elements of the *Hart v. McLucas*⁵³ intentional falsification standard.

The law judge noted that respondent stipulated to the following: that his answer to Question 18.y. was incorrect, false, and material in that the information had the potential to influence the FAA’s decision to issue his medical certificate.⁵⁴ Accordingly, the law judge found that the first two elements of the *Hart v. McLucas* standard—1) a false representation 2) in reference to a material fact—were met in this case.⁵⁵ Thus, the only remaining issue before the law judge was the third element—whether respondent knowingly made the false representation on each of his 11 medical certificate applications.⁵⁶

The law judge gave Dr. Schall’s testimony “great weight” because it was logical, persuasive, and reflective of “in[-]depth knowledge of the area for which he was qualified as an

⁵⁰ *Id.* at 168, 171.

⁵¹ *Id.* at 168.

⁵² Oral Initial Decision at 259.

⁵³ 535 F.2d 516 (9th Cir. 1976).

⁵⁴ Oral Initial Decision at 247; Tr. at 18.

⁵⁵ Oral Initial Decision at 247.

⁵⁶ *Id.* at 247.

expert witness.”⁵⁷ The law judge found Mr. Frederick credible because he answered questions in a “dutiful manner.”⁵⁸ By contrast, the law judge found respondent not credible because his testimony was evasive and non-responsive in response to questions about who filed his VA claims and about why he continued to accept VA disability compensation while not believing himself to be disabled.⁵⁹ The law judge noted that respondent’s statement that his VA disability benefits were merely “a thank you for your service” needed corroboration that respondent did not provide.⁶⁰ The law judge further found “problematic” respondent’s admission that he was receiving VA disability benefits for undiagnosed conditions and “conclusive and non-persuasive” respondent’s association of Question 18.y. to SSA benefits.⁶¹

The law judge did not find credible that respondent answered “no” because he believed he was not disabled.⁶² The law judge explained that this reasoning “was never discussed with Special Agent Frederick, nor raised in his answers to the complaint. It was essentially brought up at [the] hearing.”⁶³ The law judge also did not find credible that respondent engaged AMAS to amend his applications because AMAS’s submission packet did not indicate an intent to amend and correct the record.⁶⁴

The law judge noted respondent’s graduation from the Air Force Academy, his past service as a Lieutenant Colonel and a flight commander for over 220 servicemen, and his ATP rating as the highest aviation rating.⁶⁵ The law judge concluded that, as a “clearly intelligent,

⁵⁷ *Id.* at 230-231.

⁵⁸ *Id.* at 234.

⁵⁹ *Id.* at 253-254.

⁶⁰ *Id.* at 254.

⁶¹ *Id.* at 254-256.

⁶² *Id.* at 255.

⁶³ *Id.*

⁶⁴ *Id.* at 254-255.

⁶⁵ *Id.* at 256-257.

experienced, and worldly individual,” respondent could not have “misunderstood the meaning of a question like 18Y.”⁶⁶

The law judge rejected respondent’s affirmative defenses of an honest mistake and detrimental reliance, noting respondent provided no corroborating evidence and his own testimony on point was misleading.⁶⁷ The law judge indicated that respondent’s submission of documents through AMAS did not constitute self-reporting because respondent did so only after being interviewed by Mr. Frederick.⁶⁸ After noting the absence of mitigating factors and respondent’s “lack of trustworthiness,” the law judge concluded that revocation was “warranted in the public interest in air commerce and air safety.”⁶⁹ Respondent timely appealed the law judge’s decision on January 28, 2022, and filed a supporting brief on May 16, 2022.⁷⁰ The Administrator filed a reply brief on July 15, 2022.⁷¹

D. Issues on Appeal

On appeal, respondent argues that the law judge committed several reversible errors requiring either a dismissal of this action or a mitigation of the sanction.⁷² Respondent argues that the law judge’s credibility determinations were arbitrary and capricious because the law judge was biased against respondent during the hearing, and because the law judge’s credibility determinations are not based on the evidence.⁷³ Respondent further argues that the law judge

⁶⁶ *Id.* at 257.

⁶⁷ *Id.* at 257, 262.

⁶⁸ *Id.* at 262.

⁶⁹ *Id.* at 263.

⁷⁰ On February 23, 2022, the NTSB’s General Counsel approved respondent’s unopposed motion for an extension of time to file his brief.

⁷¹ On June 2, 2022, the NTSB’s General Counsel approved the Administrator’s unopposed motion for an extension of time to file his reply brief.

⁷² Appeal Br. at 10.

⁷³ *Id.* at 21.

erred in affirming the sanction of revocation because the law judge did not consider any mitigating factors.⁷⁴ Respondent explains that he took corrective action by amending his medical certificate applications with the help of AMAS, which serves as a mitigating factor of “prompt corrective action” under FAA Order 2150.3C.⁷⁵

2. *Decision*

While we give deference to our law judge’s rulings on certain issues, we review cases as a whole *de novo*.⁷⁶

A. *The Law Judge’s Credibility Determination Was Not Arbitrary or Capricious*

1. *Intentional Falsification*

To prove intentional falsification under *Hart v. McLucas*, the Administrator must prove an airman: 1) made a false representation, 2) in reference to a material fact, and 3) with knowledge of the falsity of fact.⁷⁷ On appeal, respondent does not deny that he made a false representation in reference to a material fact when he answered “no” to Question 18.y. on 11 medical certificate applications. However, he does deny having knowledge of the falsity of this fact.

The third element of the *Hart v. McLucas* test requires respondent to have known the representations were false when he made them. Direct evidence of actual knowledge is not required to prove a case of intentional falsification, and the element of knowledge may be

⁷⁴ *Id.* at 24.

⁷⁵ *Id.* at 24-28.

⁷⁶ *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).

⁷⁷ 535 F.2d 516, 519 (9th Cir. 1976).

inferred from circumstantial evidence.⁷⁸ The law judge’s credibility findings are essential in intentional falsification cases⁷⁹ and must be based explicitly on factual findings in the record.⁸⁰ We will not overturn a law judge’s credibility determination unless a party can establish the determination was arbitrary or capricious,⁸¹ and the Board will not withhold deference to a law judge’s credibility findings simply because other evidence in the record could have been given greater weight.⁸²

We uphold the law judge’s determination that respondent lacked credibility in testifying that Question 18.y. did not require him to report his VA medical benefits. The law judge firmly based this finding on the record, which makes clear that the VA awarded respondent benefits for medical disabilities. For example, a June 2002 VA rating decision specifies that respondent “filed an original disability claim,”⁸³ and the VA decisions noted that respondent was awarded compensation for service-connected “disabilities.”⁸⁴ Question 18.y. neither specified that it pertained solely to SSA benefits nor explicitly excluded VA benefits, but generally asked about “[m]edical disability benefits.”⁸⁵ Moreover, the law judge appropriately discussed respondent’s

⁷⁸ *Olsen v. NTSB*, 13 F.3d 471, 75 (9th Cir. 199); *Erickson v. NTSB*, 758 F.2d 285, 288 (8th Cir. 1985).

⁷⁹ *Porco*, NTSB Order No. EA-5591 at 28-29.

⁸⁰ *Dillmon v. NTSB*, 588 F.3d 1085, 1094 (D.C. Cir. 2009); *Administrator v. Singleton*, NTSB Order No. EA-5529 (2010) (stating a law judge must make credibility determinations in intentional falsification cases). *See Administrator v. Reynolds*, NTSB Order No. EA-5641 at 8 (2012).

⁸¹ *See Porco*, NTSB Order No. EA-5591 at 20-21.

⁸² *Administrator v. Swaters*, NTSB Order No. EA-5400 at n.8 (2008) (citing *Administrator v. Crocker*, NTSB Order No. EA-4565 at 6 (1997)). *See Administrator v. Klock*, 6 NTSB 1530, 1531 (1989).

⁸³ Exh. A-2 at 22 (emphasis added).

⁸⁴ *Id.* at 24-26 (emphasis added).

⁸⁵ *See* Exh. A-10 at 111-275.

credentials and achievements as indicative of respondent's ability to comprehend the meaning of Question 18.y.⁸⁶

We further find the law judge's determination that respondent was evasive and non-responsive consistent with respondent's testimony at the hearing. For example, when asked if in 2001 respondent had the American Legion file his VA claim, respondent stated, "So, really, Your Honor, it is to establish—the service-connection establishes care for life, and that is kind of — that is really what they talk about, but to—."⁸⁷ After the law judge rephrased the question, respondent testified, "I went there to—yes, Your Honor. I went there to establish a service connection. I was not seeking any—any other compensation or anything; just to establish the record."⁸⁸ Later in the hearing, the law judge sought clarification, "It is your testimony that you never applied for Veterans' Administration Disability Benefits?"⁸⁹ Respondent replied, "So, Your Honor, I made—."⁹⁰ The law judge interjected, "It is a yes and no—it is—yes and no, please yes or no, and then you can explain."⁹¹ Indeed, respondent's evasive and nonresponsive answers justifiably prompted the law judge to remind respondent to answer with a "yes or no."⁹² Because the law judge expressly relied on the facts before him, including the VA record and respondent's own testimony and credentials, his credibility determinations are not arbitrary or capricious. Since we find no reason to overturn the law judge's finding respondent not credible, we uphold the law judge's determination that respondent intentionally falsified his answers to

⁸⁶ See Oral Initial Decision at 256-257.

⁸⁷ Tr. at 149.

⁸⁸ *Id.* at 150.

⁸⁹ *Id.* at 151.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See *Administrator v. Tushin*, NTSB Order No. EA-5902 at 59 (2021).

Question 18.y. on his 11 medical certificate applications dated between December 2008 and June 2018.

2. *Bias*

Respondent alleges that the law judge committed reversible error, which warrants the action dismissed or the sanction mitigated.⁹³ Specifically, respondent alleges that the law judge's demeanor and questioning of respondent showcases the law judge's bias and prejudicial mindset against respondent and in favor of the Administrator.⁹⁴ Respondent alleges that the law judge was biased in favor of the Administrator because the law judge posed questions to Mr. Frederick that were designed to only undermine respondent's credibility, and because the law judge did not question Dr. Schall.⁹⁵ Respondent further alleges that the law judge was biased against respondent and describes the judge's cross-examination as hostile,⁹⁶ aggressive,⁹⁷ prosecutorial,⁹⁸ condescending,⁹⁹ intimidating,¹⁰⁰ and designed to incriminate respondent.¹⁰¹

We have held that to disqualify a law judge for bias, "the bias . . . must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the

⁹³ Appeal Br. at 10.

⁹⁴ *Id.* at 10-21.

⁹⁵ *Id.* at 16-20.

⁹⁶ *Id.* at 14 ("Judge Montañó's examination was akin to a hostile cross-examination").

⁹⁷ *Id.* at 14 ("Judge Montañó's approach to his examination of [respondent] had all the trappings of an aggressive, prosecutorial cross-examination that showed little respect to a person that had served his country for over 20 years").

⁹⁸ *Id.* at 14 (Judge Montañó's approach to his examination of [respondent] had all the trappings of an aggressive, prosecutorial cross-examination that showed little respect to a person that had served his country for over 20 years").

⁹⁹ *Id.* at 15 ("Judge Montañó's retort...smacks of a biased and condescending trier of fact...[and]...[his] abrupt and condescending quip, or conduct of that nature, should not be tolerated in an administrative hearing").

¹⁰⁰ *Id.* at 15 ("In another instance of intimidating examination, Judge Montañó rudely interrupted Mr. Johns as he began to provide an answer in response to the Court's questioning").

¹⁰¹ *Id.* at 12-21.

judge has learned from his... participation in the case.¹⁰² Unfavorable rulings are not evidence of bias.¹⁰³ After a thorough review of the transcripts, we find no evidence of bias; to the contrary, we find the law judge properly exercised his authority to seek clarification from respondent.¹⁰⁴

We find no evidence of bias in favor of Dr. Schall or Mr. Frederick. Respondent's allegation of bias in favor of these witnesses is conclusory and without support. The law judge was not required under our rules to question Dr. Schall, and none of the law judge's questions asked of Mr. Fredrick or respondent were irrelevant or went beyond the scope of these proceedings.¹⁰⁵ The law judge was thorough, and at times, his repetitive questions towards respondent were proper given the repeatedly non-responsive and sometimes evasive answers provided by respondent. In questioning respondent, the law judge attempted to elicit direct and reliable testimony to clarify the record and develop an understanding of the material issues in the case.¹⁰⁶ We have long allowed law judges to engage in such questioning.¹⁰⁷ The law judge asked follow-up questions that respondent had mentioned in his motions and in testimony—his military and civilian careers; his receipt of the VA disability benefits, especially for obstructive sleep apnea for which he was not diagnosed at the time; his reasoning for not notifying the VA of his situation; his decision to enlist AMAS's help to submit documents to the FAA; and his reliance on his medical counsel. By doing so, he gave respondent ample opportunity to testify on all

¹⁰² *Administrator v. Lackey*, NTSB Order No. EA-5419 at 11 (2008), *aff'd* *Lackey v. FAA*, 386 Fed. Appx, 689, 2010 WL 2781583 (9th Cir. 2010); *Administrator v. Steel*, 5 NTSB 239, 2243 n. 8 (1985).

¹⁰³ *Administrator v. Pruss and Douglas*, NTSB Order No. EA-4599 at n.9 (1997).

¹⁰⁴ *See Tushin*, NTSB Order No. EA-5902 at 59.

¹⁰⁵ *See id.* at 61.

¹⁰⁶ *See id.*

¹⁰⁷ *See Administrator v. Mize*, NTSB Order No. EA-5579 (2011); *Administrator v. Simmons*, NTSB Order No. EA-5275 at 9-10 (2007) (citing 49 C.F.R. § 821.35(b); *Administrator v. Kachalsky*, NTSB Order No. EA-4847 at 3 n. 4 (2000).

issues openly and truthfully.¹⁰⁸ Because the law judge relied on nothing more than what he had learned in this case, we find no evidence of bias.

B. The Sanction Was Warranted in Law and Justified in Fact

The Administrator counterargues that the law judge’s choice of sanction is entitled to deference and is a reasonable application of the FAA’s enforcement sanction guidance for intentional falsification of 11 airman medical certificate applications.¹⁰⁹ In *Administrator v. Pham*, the D.C. Circuit Court of Appeals determined that, given “the Board essentially acts as a court in the split-enforcement regime with the FAA,” the Board should only overturn the Administrator’s sanction if it is “unwarranted in law or without justification in fact.”¹¹⁰

Respondent contends that the law judge erred in failing to consider his corrective action in mitigating the sanction of revocation.¹¹¹ We disagree because the law judge expressly considered the mitigating factor of corrective action, which was alleged by respondent.¹¹² The law judge properly rejected respondent’s claim that he amended the 11 medical certificate applications at issue. Based on testimony and evidence, the law judge found that respondent did not actually self-report the falsity of his Question 18.y. answers because AMAS’s submission never mentioned an intention to “amend” the applications, and because AMAS’s submission to the FAA occurred “well after” respondent’s interview with Mr. Frederick.¹¹³ For these reasons, we do not find respondent’s argument related to the identified mitigating factor to be persuasive.

¹⁰⁸ See *Tushin*, NTSB Order No. EA-5902 at 61.

¹⁰⁹ Reply Br. at 26.

¹¹⁰ *Administrator v. Pham*, NTSB Order No. EA-5936 (Aug. 26, 2022) (citing *Administrator v. Pham*, 33 F. 4th 578 (D.C. Cir. 2022); see also *Pasternack v. NTSB*, 596 F.3d. 836, 839 (D.C. Cir. 2011)).

¹¹¹ Tr. 261-263.

¹¹² *Id.* 262-263.

¹¹³ *Id.* 262.

The sanction of revocation is warranted in fact. Despite being in receipt of VA disability benefits for various service-connected disabilities, respondent intentionally falsified the 11 medical certificate applications in question when he answered “no” to Question 18.y. The sanction of revocation is also warranted in law. The Board’s case law establishes revocation as the appropriate sanction for even a single instance of intentional falsification.¹¹⁴ This is consistent with the FAA sanction guidance directing revocation for making an intentionally false statement on an application for an airman medical certificate.¹¹⁵ Thus, we affirm the law judge’s finding that revocation is the appropriate sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent’s appeal is denied;
2. The law judge’s order is affirmed; and
3. The Administrator’s revocation of respondent’s airline transport pilot certificate, the medical certificates issued on June 6, 2018, and June 24, 2019, and any other airman certificates and unexpired airman medical certificates is affirmed.

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

¹¹⁴ See, e.g., *Administrator v. Burbank*, NTSB Order No. EA-5860 (2019); *Administrator v. Byrd*, NTSB Order No. EA-5782 (2016); *Administrator v. Tseng*, NTSB Order No. EA-5817 (2017).

¹¹⁵ See FAA Order 2150.3C.

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

* * * * *

In the matter of: *

STEPHEN M. DICKSON, *
ADMINISTRATOR, *
FEDERAL AVIATION ADMINISTRATION, *

Complainant, *

v. *

Docket No.: SE-30780
JUDGE MONTAÑO

BRADLEY JOHNS, *

Respondent. *

* * * * *

Via Zoom videoconference

Thursday,
January 27, 2022

The above-entitled matter came on for bench decision,
pursuant to notice at 11:00 a.m. Eastern Standard Time.

BEFORE: ALFONSO J. MONTAÑO
Chief Administrative Law Judge

APPEARANCES:

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Also present:

RACHEL SAMUDA
Airline Pilots' Association

ORAL INITIAL DECISION AND ORDER

(9:05 a.m. EST)

1
2
3 JUDGE MONTAÑO: We're on the record. We convened this
4 morning so that I could issue the Oral Initial Decision and
5 Order in the case of Stephen M. Dickson versus Bradley Johns,
6 Docket No. SE-30780.

7 We are convening through telephone conference call, and
8 at this point I would like the parties to identify themselves,
9 where they are geographically located, and who is with them or
10 who is joining the telephone conversation with them.

11 So I will ask the Administrator to go first.

12 Ms. Baxter?

13 MS. BAXTER: Good morning, Your Honor. I'm Allison
14 Baxter for the Administrator. I am located in the Los Angeles
15 area, and the Administrator does not have anyone else on the
16 phone this morning.

17 JUDGE MONTAÑO: All right. Thank you. Mr. Ison?

18 MR. C. ISON: Your Honor, Christopher Ison. I am located
19 in Lakeland, Florida today. I'm joined on the phone by co-
20 counsel Anthony Ison, who is in West Liberty, Kentucky, as
21 well as Respondent, Mr. Bradley Johns, who is located I
22 believe in St. Louis, Missouri.

23 JUDGE MONTAÑO: All right. Thank you very much. I
24 appreciate it.

25 I wanted to check with counsel. I had asked to find out

1 -- I wanted to ask you to find out if you had received the
2 appeals page. It should have been emailed to you. Ms.
3 Baxter?

4 MS. BAXTER: Yes, Your Honor. I did receive it.

5 JUDGE MONTAÑO: All right. Mr. Ison?

6 MR. C. ISON: Yes, sir.

7 JUDGE MONTAÑO: All right. Thank you. Thank you very
8 much.

9 I will now issue my Oral Initial Decision.

10 ORAL INITIAL DECISION AND ORDER

11 JUDGE MONTAÑO: This has been a proceeding under the
12 provisions of 49 U.S.C. Section 24709, formerly Section 609 of
13 the Federal Aviation Act, and the Provisions and Rules of
14 Practice in Air Safety proceedings of the National
15 Transportation Safety Board, and the sections pertaining to
16 emergency proceedings instituted by the Administrator of the
17 Federal Aviation Administration.

18 I will discuss the emergency nature of this case in a
19 moment. This matter has been heard before me as the
20 Administrative Law Judge assigned to this case, and as
21 committed by the regulations, I am issuing an Oral Initial
22 Decision in the proceeding.

23 Pursuant to notice, this matter came on for Zoom virtual
24 trial on January 25th, 2022. The Administrator is represented
25 by Allison Baxter, Esquire, Attorney for the Federal Aviation

1 Administration, Office of Chief Counsel Enforcement Division,
2 Western Team. The Respondent is represented by Mr. Anthony
3 Ison, Esquire and Mr. Christopher Ison, Esquire. The
4 Respondent, Mr. Bradley Johns, is currently present for this
5 telephone conference call, and had been present throughout the
6 Zoom hearing in this matter.

7 The parties were afforded a full opportunity to offer
8 evidence, to call, examine, and cross examine witnesses, and
9 to make arguments in support of their respective positions. I
10 will not discuss all of the evidence in detail. I have,
11 however, considered all of the evidence, both oral and
12 documentary. That which I do not specifically mentioned is
13 viewed by me as corroborative or is not materially effecting
14 the outcome of the decision.

15 The Respondent appealed the Administrator's Emergency
16 Order of Revocation dated March 4, 2020, which was
17 subsequently filed as the complaint in this case on March 12,
18 2020. Respondent first moved to challenge the emergency
19 nature of the proceeding but withdrew that challenge and
20 subsequently waived the emergency nature of the proceedings.

21 The Administrator alleges the Respondent violated 14 CFR
22 67.403(a)(1), in that no person may make or cause to be made,
23 a fraudulent or intentionally false statement on any
24 application for a medical certificate.

25 The Administrator alleges that the Respondent violated 14

1 CFR 67.403(b) which states that the commission by any person
2 of an act prohibited under paragraph (a) of this section is a
3 basis for suspending or revoking all airman, ground
4 instructor, and medical certificates and rating held by that
5 person.

6 The Administrator further asserts that pursuant to 14
7 C.F.R. 67 403(c), an incorrect statement upon which the FAA
8 relied, made in support of an application for a medical
9 certificate, is a basis for revocation or suspension of a
10 medical certificate. The Administrator asserted that if it is
11 determined that the Respondent's no answer to question 18Y and
12 the certification on block 20 on the medical application form
13 are not found to be intentionally false or fraudulent, that
14 incorrect statement is still the basis for revocation of
15 Respondent's first-class medical certificate issued to him in
16 this case.

17 The Administrator alleges that the Respondent made the
18 same false or fraudulent representation as to question 18Y on
19 his medical application forms when he completed the forms
20 which were dated December 17, 2008, June 3, 2009, June 24,
21 2013, January 6, 2014, July 24, 2014, February 2, 2015, June
22 8, 2015, December 9, 2015, June 1, 2016, June 13, 2017, and
23 June 6, 2018.

24 The Respondent filed his first answer to the
25 Administrator's complaint on March 13, 2020, in which admitted

1 to the allegations in the complaint except the allegation in
2 paragraphs 2, 9, 11, 12, 13, 16, and 17. He denied the
3 allegations in those paragraphs.

4 The Respondent then filed an amended answer on May 6,
5 2020, in which he listed the following affirmative defense:
6 "Respondent reasonably relied on the assistance and counsel of
7 his medical advocate to his detriment."

8 Respondent filed a second amended complaint on January 7,
9 2022, in which he denied the same allegation in the complaint
10 as listed in the first answer, and the Respondent asserted
11 additional affirmative defenses.

12 The first affirmative defense he lists is that the
13 Respondent did not intend to deceive anyone because he did not
14 have the requisite knowledge that his response to item 18Y on
15 his FAA form 8500-8 was false. Respondent's error was an
16 honest mistake.

17 The second affirmative defense is that the Respondent
18 reasonably relied on the assistance and counsel of his medical
19 advocate to his detriment.

20 The third affirmative defense was that the Respondent
21 took corrective action before the FAA discovered the
22 violation, after discovery but before legal enforcement action
23 was initiated, or after legal enforcement action was taken to
24 amend his previous answer to item 18Y on the applicable FAA
25 8500-8 applications which are the subject of this case.

1 As such, the Respondent argued that the corrective action
2 should be mitigating as to any sanction imposed upon him in
3 this case should I find against the Respondent.

4 The Respondent then listed in that affirmative defense
5 the correspondence he sent to the FAA in order to correct any
6 perceived error on the 8500-8 applications. That is how the
7 affirmative answers were worded.

8 On January 12th, 2022, the Respondent filed a motion to
9 exclude the expert, or in the alternative, to continue the
10 hearing in this matter. The Administrator filed a response on
11 January 13th, 2022. I denied the Respondent's motion in a
12 prehearing conference on January 20th, 2022. I provided a
13 detailed explanation and rationale of my ruling for the record
14 during my introductory remarks the first day of the hearing.

15 The Board has adhered to a three-prong standard to prove
16 falsification claims. The Administrator must prove by a
17 preponderance of the reliable, probative, and credible
18 evidence that an airman (1) made a false representation, (2)
19 in reference to a material fact, and (3) with knowledge of the
20 falsity of that fact. The three-part test derives from the
21 case of Hart v. McLucas, 535 F.2d pages 516 and 519. It is a
22 9th circuit case decided in 1976.

23 The Board has also held that a statement is false
24 concerning material fact under this standard if the alleged
25 false fact could influence the Administrator's decision

1 concerning the certificate or compliance with the regulations.
2 The Board has also held that the three-prong test can be
3 proven by circumstantial evidence.

4 I will now discuss the agreements and stipulations
5 between the parties.

6 As I previously stated, in Respondent's previous answers
7 to the Administrator's complaint he initially denied the
8 allegations in paragraphs 2, 9, 11, 12, 13, 16, and 17 of the
9 Administrator's complaint.

10 At the beginning of the hearing in this matter, the
11 Respondent indicated that after discussion with the
12 Administrator's counsel that Respondent was now admitting the
13 allegations in paragraphs 2, 9, 11, 13, and 16. As those
14 allegations had been admitted by the Respondent, they are
15 deemed to have been established for the purpose of this case
16 and this decision.

17 The Respondent testified that he now only denies the
18 allegations in paragraph 12 and paragraph 17. Paragraph 12
19 alleges that when he answered no to item 18Y, he knew that the
20 answer was false. Paragraph 17 of the Administrator's
21 complaint reads, "You knew that your certification of your
22 medical certificate applications were false."

23 The Respondent believes that he has admitted all of these
24 allegations in the Administrator's complaint but for
25 paragraphs 12 and 17. And in so making those admissions, the

1 first two prongs of the Hart v. McLucas test have been
2 established in this case.

3 The parties agree that the only remaining issue to be
4 litigated in the case is whether at the time that the
5 Respondent made the false representation on each of the
6 medical applications in this case, he made those false
7 representations with knowledge of the falsity of that fact.

8 I will now discuss what exhibits have been admitted into
9 evidence in this case.

10 The Administrator motioned the admission of Exhibit A-1,
11 which was admitted without objection, and Exhibit A-2, which
12 was admitted over the Respondent's objection. The parties
13 stipulated to the admission of Administrator's A-2, A-10,
14 Exhibit A-31, A-32, and A-33, which were admitted based on
15 that stipulation and without objection from the Respondent.

16 The Respondent moved for the admission on a sole exhibit
17 marked as R-1, which was admitted into evidence without
18 objection from the Administrator.

19 I will now discuss the testimony that was presented in
20 this case by both parties. I will summarize that testimony of
21 each of the witnesses.

22 The Administrator presented the testimony of two
23 witnesses; Dr. David Schall and Special Agent Malcom
24 Frederick. Dr. Schall was the Administrator's first witness.
25 He testified he is currently employed with the FAA Medical

1 Certification Division in Oklahoma City, Oklahoma. Dr. Schall
2 testified that he has worked for the FAA for 11 years. He is
3 an FAA certification physician in aerospace and
4 neuroaudiologist.

5 Dr. Schall testified that his duties in his current
6 position including providing training to Airman Medical
7 Examiners. He provides training as to medical
8 certification -- airmen medical certification process. Dr.
9 Schall testified that he has reviewed over 20,000 airmen cases
10 and applications during his time with the FAA. He is board
11 certified in aerospace medicine, and he is a board-certified
12 head and neck surgeon and has extensive experience in the
13 treatment of obstructive sleep apnea.

14 Dr. Schall testified as to his educational background and
15 his academic appointments, medical board certifications, and
16 his experience as the Chief Flight Surgeon in his 32 years in
17 the Air Force.

18 Dr. Schall medical educations and aviation experience is
19 set forth in his curriculum vitae, which has been admitted
20 into evidence as Administrator's Exhibit A-1.

21 The Administrator moved to have Dr. Schall qualified as
22 an expert in the area of the FAA medical certification
23 process. The Respondent did not voir dire Dr. Schall and did
24 not object to qualifying Dr. Schall as an expert in the FAA
25 medical certification process.

1 Dr. Schall was asked why the answers to question 18Y on
2 the medical application form was important to the FAA. He
3 responded to the Administrator counsel's question by stating
4 that it was important to know if the airman is receiving
5 disability benefits so that the FAA could assess whether the
6 disability for which the benefits were being paid could affect
7 aviation safety. He testified if he had answered yes to
8 question 18Y, the medical examiner would have requested
9 additional information or medical information from the airman
10 so that the Airman Medical Examiner can determine if the
11 airman's condition could be a risk to flight safety and to
12 determine whether or not the airman can be issued a medical
13 certificate.

14 Dr. Schall testified that a complete review of the
15 records relative to that disability is identified, it's
16 necessary to ensure aviation safety.

17 Dr. Schall testified that the FAA has asked the Airman
18 Medical Examiners to also screen for sleep apnea. In this
19 case, the Respondent was receiving Veterans Administration
20 disability benefits for sleep apnea, as well as other medical
21 conditions. The Airman Medical Examiner, if he had been
22 informed of the disability benefits being paid for sleep apnea
23 or any of the other medical conditions for which Respondent
24 was receiving Veterans Administration disability benefits, the
25 Airman Medical Examiner would have asked for additional

1 records to determine the severity of the conditions and to
2 determine if the prescribed treatment specifically for the
3 sleep apnea is effective.

4 Specifically, Dr. Schall testified that an Airman Medical
5 Examiner cannot issue an airman medical certificate unless
6 that additional information is provided. If the answer to
7 question 18Y regarding the receipt of disability benefits is
8 yes, the Airman Medical Examiner would request again
9 additional information and would provide a 14-day time period
10 for which the airman to provide the requested information. If
11 the information is not provide by the airman in those 14 days,
12 the Airman Medical Examiner will defer the issuance of the
13 medical certificate and refer the case to the FAA in Oklahoma
14 City.

15 The Aerospace Medical Certification Division in Oklahoma
16 City will then inform the airman that additional information
17 is required and will provide the airman 60 days to provide the
18 additional documentation. If the information is not provided,
19 the application for an airman medical certificate will be
20 denied and perhaps additional enforcement action may be taken.

21 In this case, the FAA had requested information relative
22 to the sleep apnea condition such as medications prescribed
23 for the condition and documentation of sleep studies. The FAA
24 would also request information relative to the use of a CPAP
25 machine and would ask for information as to the efficacy of

1 that treatment. The airman will also have to provide a
2 written signed statement indicating that the treatment for the
3 sleep apnea is working. Dr. Schall testified that additional
4 information will be requested for the other conditions for
5 which disability benefits were being paid as well, and they,
6 too, will be analyzed.

7 On cross examination, Dr. Schall was shown Exhibit R-1,
8 which is the paper copy of the medical application form 8500-
9 8. Dr. Schall agreed that prior to the use of that express
10 online application program, the paper copies were used. He
11 agreed that the medical application form in this case on
12 December 17th, 2008 and June 3rd, 2009 were submitted using
13 paper application forms.

14 Dr. Schall agreed that the instructions for the medical
15 application form at R-1 did not provide any instructions as to
16 question 18Y or information as to how the FAA will define
17 medical disability benefits.

18 Dr. Schall testified that the instructions for disability
19 benefits are provided in the Med Express application, but he
20 could not testify as to when the instructions were included in
21 the Med Express computer program.

22 Dr. Schall agreed that the written form instructions did
23 not indicate who the airman could call if the airman had a
24 question as to filling the form. He agreed that the written
25 form did not indicate the question should be directed to the

1 Airman Medical Examiner. He was speaking directly to the
2 written form.

3 Dr. Schall testified that he was familiar with Exhibit A-
4 31, which was identified as the Aviation Guide for Medical
5 Examiners. He testified that instructions relative to medical
6 disability benefits is included in the documents for an Airman
7 Medical Examiner to review. The instructions indicate that
8 the applicant must report any disability benefits received
9 regardless of the source or the amount. Dr. Schall agreed
10 that the instructions to the Airman Medical Examiners in this
11 exhibit are not included in the instructions for the medical
12 application form. Dr. Schall testified that the Guide to
13 Airman Medical Examiners is a public document and is
14 accessible to anyone.

15 When asked what an airman should do if he or she made a
16 mistake on the application form and wanted to correct it after
17 it had been submitted, Dr. Schall testified that the airman
18 could contact the Airman Medical Examiner who conducted the
19 examination to discuss the mistake. The airman could also
20 contact the Federal Aviation Regional Flight Surgeon for
21 assistance and that that office would provide information.

22 Over the objection of the Administrator, I allowed
23 Respondent to ask questions of Dr. Schall relative to
24 Respondent's subsequent disclosure and his assertion that he
25 attempted to amend the medical application forms, which are at

1 issue in this matter.

2 Dr. Schall was asked if he was familiar with the Aviation
3 Medical Services, commonly referred to as AMAS. He testified
4 that he had seen instances where airmen amended their medical
5 applications through the use of AMAS. Dr. Schall testified
6 that it could be acceptable to use AMAS, but it depended on
7 how egregious the falsification was on the medical application
8 forms and over how long a period the falsifications took
9 place. He testified that the FAA considers whether there is a
10 pattern of falsification of whether the medical application is
11 for a first class medical or a third class medical. Dr.
12 Schall testified that the FAA reviewed the AMAS information
13 and determined if the case should be referred to the Federal
14 Aviation Administration's legal department and will also
15 determine if the FAA should deny any pending medical
16 application.

17 Dr. Schall testified that if a falsification took place
18 over a 10-year period, the FAA would not look kindly on AMAS
19 amending the application forms.

20 Dr. Schall agreed that the Respondent took action to
21 provide the FAA information regarding the medical application
22 forms at issue in this case. Respondent pointed out the
23 letter from AMAS to the FAA dated April 17th, 2019, and when
24 asked if Respondent had made efforts to amend his medical
25 application forms, Dr. Schall responded in the affirmative.

1 Dr. Schall testified that the records indicate that as a
2 result of the information from AMAS, the FAA requested
3 additional information because the FAA was unable to establish
4 Respondent's eligibility for a first class airman medical
5 certificate. The FAA granted the Respondent a requested
6 extension of time to provide additional information.

7 Respondent's counsel asked Dr. Schall why, if at the time
8 the FAA knew of Respondent's disability rating, that the
9 application for a medical certificate had not been denied
10 immediately. Dr. Schall testified that the information at
11 that level of the FAA had not been reviewed by a physician.
12 If the information had been reviewed by a physician and a
13 review of the conditions and the number of applications that
14 had been filed over an extended period of time in this case
15 met, then that physician would probably have denied the
16 medical application.

17 Respondent's counsel pointed out that there was no
18 diagnosis of sleep apnea during the period from 2008 to 2018
19 in this case, and I believe he asked Dr. Schall about
20 Respondent's understanding relative to a sleep evaluation
21 conducted in Costa Rica in 2003. Dr. Schall testified that an
22 airman cannot make his own medical determinations relative to
23 his own medical condition. The medical sleep study that was
24 conducted in Costa Rica in 2003 is not in the record in this
25 case, and the Respondent testified that he wasn't able to

1 locate it.

2 I note that during the period of time from 2008 to 2018
3 Respondent was receiving the VA disability benefits from the
4 Veterans Administration.

5 Dr. Schall was then asked to review the medical
6 application form dated June 6th, 2018 in which the Airman
7 Medical Examiner, Dr. Sinden, indicated that the Respondent
8 was not at risk for sleep apnea during the examination. Dr.
9 Schall responded that Dr. Sinden made that determination based
10 on information he had at the time. The Respondent answered no
11 to question 18Y. The Respondent gave no history of sleep
12 apnea, and again, did not check yes to question 18Y, which
13 would have indicated that further information would have been
14 required regarding the Respondent's Veteran's Administration
15 disability benefits and the number of other conditions
16 including sleep apnea before Dr. Sinden could have issued a
17 medical certificate. In this case, the Respondent did not
18 answer yes to question 18Y, and therefore, Dr. Sinden did not
19 have any information that would lead him to conclude that he
20 must seek additional information about the Respondent's
21 conditions for which he was receiving Veterans Administration
22 disability benefits.

23 There was no redirect examination of Dr. Schall, and
24 there were no questions which I asked. I found Dr. Schall's
25 expert testimony to be logical, I found it to be persuasive,

1 and his testimony displayed an in depth knowledge of the area
2 for which he was qualified as an expert witness. I gave his
3 testimony great weight.

4 Special Agent Malcom Frederick was the Administrator's
5 second witness. Special Agent Frederick testified that he is
6 employed by the Veterans Administration of the Office of
7 Inspector General. He is a special agent in the Criminal
8 Investigation's Division. He testified that his duties
9 include criminal investigations, contract fraud, and benefit
10 fraud. He also investigates that he calls threats.

11 Special Agent Frederick testified that he interviewed the
12 Respondent on two occasions. He testified that he was working
13 on a collaboration between the Veterans Administration and the
14 Department of Transportation and the Federal Aviation
15 Administration. The collaborative investigation was to
16 identify veterans who were commercial pilots who were
17 receiving Veterans Administration disability benefits. The
18 investigation was to identify inconsistencies in what
19 disability benefits the pilot was receiving, and if benefits
20 were reported to the FAA on the medical application form. The
21 findings of this investigation could lead to fraud charges.

22 Special Agent Frederick testified that he interviewed the
23 Respondent by telephone because his investigation disclosed
24 that the Respondent didn't disclose his disability benefits in
25 his medical application form 8500-8 that he submitted to the

1 Federal Aviation Administration.

2 Special Agent Fredrick testified that his first call to
3 Mr. Johns was on August 27th, 2018, at which time Mr. Johns
4 told him that he was pressed for time, so a second call was
5 required on August 30th, 2018.

6 During the first call, Special Agent Frederick testified
7 that Respondent was identified because of the inconsistency in
8 his receipt of the Veterans Administration disability benefits
9 and his medical application form 8500-8.

10 Agent Frederick informed Respondent that he had not
11 disclosed the disability benefits on his medical application
12 forms. Respondent did not deny to Special Agent Frederick
13 that he was receiving disability benefits. When asked by
14 Special Agent Frederick if he had been receiving benefits for
15 sleep apnea, Respondent replied the story about the sleep
16 apnea was complicated. Because of Respondent's assertion that
17 he was pressed for time, the conversation ended.

18 Special Agent Frederick testified that during the second
19 interview the Respondent told him that his wife had complained
20 about his snoring, so he went for a sleep apnea study or test.
21 Special Agent Frederick testified that the Respondent told him
22 the test was negative. Respondent also told him that after
23 his military Air Force Reserve command had found out about the
24 study that the Respondent was grounded from flying until
25 further testing was completed.

1 Special Agent Frederick testified the Respondent then
2 told him that he did not suffer from sleep apnea, and he
3 claimed to Special Agent Frederick that he did not use a CPAP
4 machine.

5 Special Agent Frederick asked Respondent why he did not
6 answer yes to question 18Y regarding whether or not he was
7 receiving disability benefits. The Respondent told him that
8 he did not equate the question 18Y on the 8500-8 form to
9 equate to Veterans Administration disability benefits.

10 Special Agent Frederick then asked Respondent that if
11 Respondent was receiving VA disability benefits for conditions
12 other than sleep apnea, and the Respondent replied that he was
13 receiving disability benefits for other medical conditions.

14 In cross examination, Special Agent Frederick was asked
15 what options he had as to his next course of action after the
16 interview with the Respondent. Special Agent Frederick
17 testified that he would collect other evidence, review the
18 evidence, and possibly interview other individuals and then he
19 would analyze the evidence and decide if there was sufficient
20 evidence to present the case to the United States Attorney.

21 Special Agent Frederick testified that Respondent was
22 cooperative with him during the conversation on August 27th and
23 August 30th, 2018. When asked about Respondent's thought
24 process during the interview, Special Agent Frederick
25 testified that when the Respondent was asked if he had made a

1 mistake in answering question 18Y, that the Respondent said he
2 didn't. Respondent had told him again that he did not think
3 that the Veterans Administration disability benefits applied
4 to question 18Y. Special Agent Frederick testified that the
5 Respondent told him that he should have checked the yes box on
6 question 18Y.

7 Special Agent Frederick testified that he would not say
8 if that failure to check box 18Y was a mistake. He testified
9 that the Respondent did not tell him that he misunderstood
10 question 18Y. Respondent told him he did not think the VA
11 disability benefits applied to that question. Special Agent
12 Frederick did not recall if Respondent asked him how he could
13 fix the problem, but he stated Respondent may have asked him
14 that question.

15 There was no redirect of Special Agent Frederick. I
16 asked Special Agent Frederick if Respondent had asked him how
17 to fix the problem, what response would he have provided.
18 Special Agent Frederick testified he would have told him that
19 he was only a fact gatherer and that he collected the evidence
20 and when the process was completed, he would determine if the
21 facts required a referral for criminal action or
22 administrative action by the FAA or the VA or both.

23 I found the testimony of Special Agent Frederick to be
24 credible. He answered questions asked of him in a direct and
25 dutiful manner. I found his testimony credible both on direct

1 and cross examination. After his testimony, the Administrator
2 rested his case.

3 The Respondent then began to present his case.
4 Respondent was the sole witness in his case. Respondent
5 testified he currently lives in Chesterfield, Missouri. He
6 has been married for 24 years and has four children ranking in
7 ages from 7 to 23. He testified that he is an air transport
8 pilot. He graduated from the Air Force Academy. Respondent
9 testified that he was in the Air Force for 28 years which
10 included his time in the Air Force Academy.

11 Respondent testified as to where he was stationed during
12 ring his active duty. He testified he has a security
13 clearance which is lower than the security clearance he had
14 earlier in his career, however, Respondent did not testify as
15 to what that security clearance was or what level of security
16 he currently had.

17 Respondent testified he separated from the Air Force
18 active duty in 2001 and went into the Air Force Reserves after
19 an offer to fly for United Airlines fell through as a result
20 of the terrorist attacks on September 11th.

21 He testified it was his primary job from 2001 to 2005 --
22 that his reserve work was his primary job during that period
23 of time from 2001 to 2005. He testified that he was a flight
24 commander in the reserves and trained pilots in the C-17
25 aircraft. He said he went back on active duty in 2007 to meet

1 his 20-year retirement requirements, and when he retired, he
2 worked for Boeing as an instructor pilot on aircraft,
3 including the 738, the 777, and the 787 aircraft.

4 He then went back to active duty for three years, and in
5 2016 was working for Delta. He testified he resigned that
6 position because of the enforcement action of this case. He
7 testified he currently works for Boeing as a manager in their
8 training program.

9 Respondent testified that he does receive Veterans
10 Administration disability benefits. He testified that when he
11 separated from the military, he was sent for a medical
12 evaluation to establish his service-connected disabilities.
13 Respondent testified he did not consider himself disabled. He
14 testified he understood the term disabled referred to those
15 soldiers who were amputees or were otherwise severely injured
16 in the war.

17 Respondent testified that he did receive Veterans
18 Administration disability benefits. He testified that between
19 2001 and 2014 he was working on and off on what he termed were
20 military orders. He testified that when he was working under
21 orders, the Veterans Administration subsequently informed him
22 that he had been overpaid for his Veterans Administration
23 disability benefits and to repay the disability benefits he
24 received while on orders. Again, he testified he did not
25 consider himself disabled. As to the medical application,

1 which were false and at issue in this case, Respondent
2 testified he reviewed the 11 medical applications at issue in
3 this case.

4 He testified that in completing the December 2000 medical
5 application, the first medical application at issue in this
6 case, he did not answer yes to 18Y because he never considered
7 himself disabled. He also testified that he thought that
8 question 18Y was referring to social security disability
9 benefits. He testified that that is how he interpreted the
10 question. He testified he thought about the question before
11 answering 18Y. He testified he did not recall seeing that
12 question on previous medical applications that he had
13 completed. Respondent did not testify that he was confused by
14 the question.

15 Respondent was asked as he sat there in the courtroom
16 during the hearing if he agreed that the answer he provided to
17 18Y on all of his medical application forms at issue in this
18 case were false. Mr. Johns responded yes. He testified that
19 he thought at the time he filled out the applications that he
20 felt that he was telling the truth.

21 He testified that only when he spoke to Special Agent
22 Frederick did he then realize that he answered the question
23 incorrectly. He testified he never discussed question 18Y
24 with the Airman Medical Examiner because he was never asked
25 about it. Respondent testified he would have answered yes to

1 question 18Y if the question had indicated that the
2 information sought was specifically about Veterans
3 Administration disability benefits.

4 I note at this point the question only refers to
5 disability benefits on 18Y.

6 He testified that he had looked at the correspondence
7 from the Veterans Administration regarding his disability
8 benefits before he filled out the application forms in 2008.

9 The Respondent testified he answered no to question 18Y in all
10 of the subsequent 10 medical applications at issue in this
11 case.

12 The Respondent testified that after he spoke to Special
13 Agent Frederick, he took action to amend his application and
14 to do the proper thing. He contacted Ms. Rachel Samuda from
15 the Airline Pilots Association. She recommended that he
16 contact AMAS.

17 He testified it took some time to gather all of his
18 records, including his attempts to obtain the 2003 sleep
19 study. He said that process of collecting the information
20 took quite a while. He testified he signed a letter in mid-
21 February of 2019 asking the FAA to amend his medical
22 application forms at issue in this case.

23 Respondent identified page 175 in Administrator's A-10 as
24 his personal statement he prepared for what he called the
25 amendment package that AMAS sent to the FAA dated February

1 27th, 2019.

2 Respondent's personal statement ends with the quote, "I
3 do not know how or why I received a VA rating for obstructive
4 sleep apnea." Respondent identified page 197 as a cover
5 letter for the amendment package submitted on his behalf by
6 AMAS to amend, according to Respondent, his previous medical
7 application forms. When asked why he did not just go to his
8 AME, Airman Medical Examiner, to amend his applications, he
9 testified that Ms. Samuda, an attorney for ALPA, recommended
10 he go to AMAS to amend his medical applications.

11 At this point for the record, I have to note that Ms.
12 Samuda did attend the hearing in this case as Respondent
13 claimed or stated she was a technical advisor. I had
14 previously asked Respondent's counsel, Mr. Christopher Ison,
15 if Ms. Samuda was a witness to any of the matters in this case
16 or if she was counsel or medical advisor that Respondent
17 refers to in his affirmative defense. Mr. Ison indicated that
18 she was not.

19 Respondent testified that he received a response from the
20 FAA after the amendment package was submitted. The Federal
21 Aviation Administration requested additional information in a
22 letter dated June 18th, 2019. The Federal Aviation
23 Administration requested a current sleep study and a personal
24 statement outlining and detailing why specifically your VA
25 disability conditions had not been recorded on your previous

1 FAA applications. Respondent testified that AMAS provided the
2 sleep study information requested and included his personal
3 statement that he prepared as requested by the FAA on
4 September 10th, 2019.

5 I note that in that letter from AMAS that AMAS stated in
6 the letter that it was inclosing Respondent's statement that
7 was requested by the Federal Aviation Administration. That
8 letter states that Mr. Johns stated that he mistakenly thought
9 the medical disability benefit box was referring to social
10 security disability benefits. He immediately corrected the
11 error once it was pointed out. There was no mention as to how
12 he immediately corrected the error.

13 Respondent testified his personal statement was included
14 in A-10 page 103. Respondent's statement indicates he
15 mistakenly thought the question was referring only social
16 security benefits. He states, however, when it was pointed
17 out to me that this was in error, I immediately began to
18 correct my mistake. Again, he testified that the package sent
19 by AMAS was to amend his previous medical application forms
20 and to correct the record.

21 In cross examination, the Respondent agreed that he had
22 applied for Veterans Administration disability benefits three
23 times. First in 2001, then 2012, and then a third claim was
24 filed in 2013. He agreed that for each of those claims for
25 Veterans Administration disability benefits he had to undergo

1 a medical examination. He agreed that for each of those
2 claims for Veterans Administration disability benefits he had
3 to provide his medical records. Respondent agreed that he
4 received a disability rating that resulted from each of the
5 claims that had been filed for Veterans Administration
6 disability benefits in 2001, 2012, and 2013. However,
7 Respondent added in response to that question that he didn't
8 know what disability ratings were.

9 Respondent was referred to A-10 page 154, which was
10 addressed to Respondent dated June 6th, 2013, which indicates
11 we made a decision on your claim for service-connected
12 compensation which we received on June 6th, 2012. Respondent
13 agreed that the letter included a VA disability rating
14 decision and details as to the reasoning for the decision.
15 One of the disability ratings was 50 percent for sleep apnea.
16 There were also ratings for eczema and rosacea, a 30 percent
17 disability, and lumbar strain, 10 percent disability, and
18 tinnitus, 10 percent disability.

19 Respondent was directed to A-10 at page 175 submitted
20 with the information that AMAS had provided. He agreed that
21 his personal statement dated February 27th, 2009 read, "I do
22 not know how or why I received a rating of sleep apnea."

23 Respondent agreed on cross examination that the
24 Administrator requested additional information from him on
25 September 19th and that he provided the information on A-10,

1 page 103. In that information he stated he completely
2 misunderstood the question of 18Y. He thought it applied to
3 social security benefits. Respondent agreed that the letter
4 of investigation from the Administrator that was subsequently
5 sent to him as part of the investigation of this enforcement
6 case, that he received that letter of investigation, and he
7 filed a response. He was then directed to A-10, page 81. In
8 that statement he indicates in response to the letter of
9 investigation dated October 31, 2019, "At the time of my
10 medical applications dated June 6th, 2018, June 13th, 2017, and
11 June 20th, 2016, December 2015, June 2015, February 2015, and
12 he described all of the other applications for which are at
13 issue in this case and which he is alleged to have falsified.
14 Respondent did not address the other disability benefits that
15 had been identified as receiving. In the letter of
16 investigation at A-10, page 83 requested information regarding
17 his applications from July 2002 to July 6th, 2018 relative to
18 his disability benefits and conditions.

19 Respondent did not address the timeframe in his response
20 to the letter of investigation, nor did he mention the other
21 disability benefits he received, nor did he state that he
22 thought 18Y related only to social security benefits?

23 On redirect the Respondent was again asked about his
24 sleep studies, which he asserted that he was not diagnosed
25 with sleep apnea. He testified he never received a CPAP

1 machine as described in the Veteran Administration disability
2 benefits. He testified that if he knew the disability rating
3 was in error, he would have fixed it.

4 When asked about his disability claims, Respondent
5 testified that the VA, Veterans Administration, had filled out
6 the disability forms for medical conditions they thought may
7 be service connected. As to the disability rating page he was
8 shown on cross examination, Respondent testified that the VA
9 makes those determinations and the analysis, he testified,
10 he's not familiar with. He testified that the VA process, as
11 far as Veterans Administration disability benefits are
12 concerned, are, and I quote, "All behind a curtain."

13 There was no recross. In response to my questions, he
14 testified again that he graduated from the Air Force Academy.
15 He's an air transport pilot. He retired as Lieutenant Colonel
16 from the Air Force, was a flight commander responsible for
17 over 200 men and women in the reserves, and he was also the
18 Director of Operations for that unit.

19 In response to my questions as to whether he filed for VA
20 disability benefits, his answers were evasive in my view and
21 not responsive. He indicated he did not understand the system
22 or the process. He testified the American Legion and others
23 in the VA had filed the claims for him. He testified he was
24 not sure why he was receiving what he sometimes termed VA
25 compensation. He thought he might be getting the benefits as

1 a, and I quote, "Thank you for your service." At another
2 point he testified that the VA was providing disability
3 payments for conditions that were service related which could
4 occur in the future. He agreed that according to his
5 testimony he was receiving disability benefits for sleep apnea
6 long before he was actually diagnosed with sleep apnea. He
7 testified he answered no to question 18Y because he did not
8 think he was disabled. When I asked why he took the VA
9 disability benefits that were paid to him if he did not think
10 he was disabled, his response was evasive and non-responsive.
11 Again, he testified he was not diagnosed with sleep apnea as
12 indicated on the VA disability rating, which was one of the
13 reasons he answered no to question 18Y. However, he
14 previously testified he was receiving Veterans Administration
15 disability benefits for other conditions. When asked why he
16 thought 18Y was only for social security benefits and not VA
17 disability benefits, he responded by stating that social
18 security provides disability benefits. His answer was in my
19 view non-responsive, conclusory, and revealed nothing about
20 his thought process when he answered no to question 18Y.

21 When I asked why he thought the Veteran's Administration
22 would ask for repayment of disability benefits that were paid
23 to him during the time he was, as he said, on orders, he
24 simply testified he was on orders, and he paid the
25 overpayments back. When I asked if he had to reapply for

1 benefits once he went off orders, his answer again was evasive
2 and not responsive.

3 As to Respondent's claim that he self-reported in an
4 attempt to report his mistakes on his previous medical
5 application forms, the Respondent agreed that he took his
6 purported attempts to correct the record, after he was
7 informed by Special Agent Frederick that the VA and the FAA
8 investigation was looking into his medical application forms.
9 He did not self-report. That is my comment. He did not state
10 that.

11 As to the purported amended package provided to the FAA
12 by AMAS on his behalf, I asked him to review the documents he
13 identified as the cover letter for the package on A-10, page
14 179, and asked him to point out in that cover letter where it
15 indicated that the information was for the purpose of amending
16 his previous medical application forms at issue in this case.
17 Respondent could find no such reference. In fact, the second
18 and final sentence in the April 17th, 2019 letter states, "We
19 are forwarding this information for your review to confirm
20 eligibility for a first-class medical certificate."

21 Respondent could not point out in any of his personal
22 statements he has provided to the FAA through AMAS in which he
23 states he was amending his previous medical application forms
24 dating back to 2008. Further, Respondent, in his own personal
25 statement, does not make any reference to his conversations to

1 Special Agent Frederick. Respondent testified that he
2 provided all the information he had to the FAA related to his
3 past medical certificates. However, Respondent did not
4 specifically identify the medical application forms he had
5 filed in this case and are at issue in this case beginning in
6 2008 through June 6th, 2018.

7 I asked about his affirmative defense that he had relied
8 on the assistance and counsel of his medical advocate to his
9 detriment since I had heard no testimony about that from the
10 affirmative defense. I asked him who provided him information
11 that he relied upon to his detriment. He testified he was
12 referring to the assistance and counsel of AMAS and the way
13 they provided the information to the FAA in the April 17th,
14 2019 package. When I asked if AMAS counseled him to answer no
15 to question 18Y on his medical application forms at issue in
16 this case, he responded no. He testified no one counseled him
17 as to how to answer 18Y.

18 There was no follow-up to my questions by the
19 Respondent's counsel or the Administrator's counsel. That
20 completed trial testimony.

21 I will now discuss how that testimony relates to the
22 decision I must make in this case.

23 As previously noted, the Board adheres to a three-prong
24 standard to prove a falsification claim. The Administrator
25 must prove by a preponderance of the evidence, reliable,

1 probative, and credible evidence -- to false representation in
2 reference to a material fact with knowledge and with falsity
3 of that fact. Again, I identified that the three-part test
4 arose from Hart v. McLucas.

5 As previously noted at the beginning of this hearing, the
6 Respondent's counsel indicated on the record that after
7 discussions with the Administrator that Respondent was
8 admitting all of the allegations that are in the
9 Administrator's complaint except for the allegations in
10 paragraph 12 and paragraph 17.

11 Respondent agrees that in making those admissions, the
12 first two prongs of Hart v. McLucas test have been established
13 in this case. The parties agree that the only remaining issue
14 to be litigated in the case was whether at the time the
15 Respondent made the false representation on each of his
16 medical application forms in this case that he made those
17 false representations with knowledge of the falsity of that
18 fact.

19 Respondent has admitted that he made false statements in
20 each of his 11 medical applications at issue in this case when
21 he answered no to question 18Y on each of those application
22 forms. Respondent admits that each of the false statements on
23 each of the 11 application forms at issue are material.

24 I will therefore turn to the third prong of the Hart v.
25 McLucas test.

1 The third prong of the Hart v. McLucas test before me is
2 whether at the time that the Respondent provided false answers
3 to question 18Y and admitted false answers to question 18Y in
4 each of the 11 medical applications at issue in this case that
5 he made those false representations with knowledge of the
6 falsity of the fact at the time he made the representations.

7 The answer to the third prong of the Hart v. McLucas test
8 turns on what the Respondent, Mr. Johns, was thinking at the
9 time he answered no to question 18Y, and thus, it raises the
10 question of the Respondent's credibility.

11 Question 18Y on each of the 18 [sic] applications at
12 issue in this case reads as follows: "Have you ever in your
13 life been diagnosed with or do you presently have any of the
14 following." 18Y reads simply, "medical disability benefits."
15 "Have you ever in your life received medical disability
16 benefits?" Thus, 18 requests him -- 18Y is simply three
17 letters, or three words. Excuse me.

18 The Administrator has established through evidence and
19 testimony that the Respondent was receiving the Veterans
20 Administration disability benefits during the period of time
21 he completed and filed the 11 medical application forms at
22 issue in this case. The Respondent has admitted in these
23 proceedings that he was receiving Veterans Administration
24 disability benefits during the entire time spanning the period
25 he completed and filed the 11 medical application forms at

1 issue in this case.

2 Respondent on cross examination admitted he filed claims
3 with for Veterans Administration disability benefits in 2001,
4 2012, and 2013. Respondent admitted on cross examination that
5 he, in fact, underwent medical evaluations and provided
6 medical records in order to obtain Veterans Administration
7 medical disability benefits for each of those claims.

8 Respondent admitted on cross examination that he received
9 a rating decision on each of his claims for Veterans
10 Administration disability benefits. However, Respondent
11 testified he did not know what those disability ratings were.
12 However, he does not deny he received the Veterans
13 Administration disability benefits for each of the physical
14 conditions listed in those ratings. He initially received
15 payment for those medical conditions identified in the
16 ratings.

17 Respondent admits that the VA disability rating decision
18 dated June 6th, 2013 indicates that he was found to have 50
19 percent disability rating based on sleep apnea.

20 The Administrator argues that the rating decision and
21 determination could only come from Respondent's medical
22 evaluation and information that he provided to the Veterans
23 Administration.

24 However, the Respondent asserts that he does not know how
25 or why he received a rating for sleep apnea. However, again,

1 he does not deny he received the money for his VA disability
2 benefits for that condition.

3 The Administrator argues and establishes that the
4 Respondent has not been consistent in his explanation as to
5 why he answered no to question 18Y. The Administrator argues
6 that the evidence establishes the Respondent when first
7 interviewed by Special Agent Frederick when he was asked if he
8 suffered from sleep apnea, the Respondent answered by stating,
9 "It's complicated." The conversation had to end early because
10 of time, the Respondent's purported time constraints. During
11 the next conversation with Special Agent Frederick, Respondent
12 did not discuss how it was complicated as to whether he had
13 sleep apnea. Respondent simply told him he did not suffer
14 from sleep apnea.

15 Respondent told Special Agent Frederick he thought that
16 question 18Y was referring to social security benefits and
17 that was the only reason Respondent provided the answer of no
18 to question 18Y.

19 Special Agent Frederick testified that Respondent told
20 him that he should have answered yes to question 18Y. Later
21 in his testimony, Respondent testified that if the question
22 had indicated he must report specifically VA benefits that he
23 would not have answered no. He would have answered yes.

24 In his testimony at trial, Respondent adds a new reason
25 for answering no to question 18Y. The Respondent testified

1 that he did not believe he was disabled. He believed that
2 question 18Y was only referring to social security benefits,
3 not VA disability benefits.

4 The Respondent testified he had two reasons at trial for
5 not answering yes to question 18Y. 1) He's not disabled; and
6 2) He thought the question 18Y only referred to social
7 security benefits.

8 In response to the Administrator's letter of
9 investigation, the Respondent asserted that he answered no to
10 question 18Y because he was never diagnosed with obstructive
11 sleep apnea. This was in response to the Administrator's
12 investigation of his medical application form.

13 Respondent made no mention of the fact that he answered
14 no to 18Y because he thought he was not disabled. The
15 Respondent does not indicate in that response to the letter of
16 investigation that he believed that question 18Y only referred
17 to social security disability benefits.

18 The Administrator argued that the Respondent's purported
19 reasons for answering no to question 18Y are inconsistent.
20 They changed relative to what the Respondent was addressing.
21 The Administrator argued the Respondent's claim that he
22 believed 18Y was only referring to social security benefits is
23 not reasonable, and the Respondent did not provide a
24 reasonable explanation for why he had that belief.

25 Furthermore, the Respondent's assertion that he was not

1 disabled and had not been diagnosed with obstructive sleep
2 apnea is not established by viewing the medical Veterans
3 Administration disability records in this case in their
4 entirety.

5 The Administrator argues that the Respondent essentially
6 wants to have it two ways. He was willing to have a
7 disability rating based on sleep apnea, bilateral shoulder
8 dislocation, eczema, rosacea, lumbar spine, tinnitus,
9 osteoarthritis, and he's willing to receive Veterans
10 Administration disability compensation benefits for those
11 conditions. However, for the purpose of the airman medical
12 certificate, upon which his livelihood and career as an AT
13 pilot depends, he's willing to testify and state he does not
14 have any disability and is not receiving VA disability
15 benefits in his medical application forms.

16 The Administrator argues that the Respondent's purported
17 reasons for answering no to question 18Y are not reasonable,
18 not credible, and should be rejected.

19 I've heard the testimony of Respondent on direct
20 examination and cross examination. I asked Respondent what
21 his counsel refers to as pointed questions. The questions I
22 asked were to engage Respondent's credibility determined at
23 the time he made the admitted false statements on his medical
24 application form. He made those false representations with
25 knowledge of the falsity of that fact.

1 I found Respondent's answers to many of my questions I
2 asked him to be non-responsive and evasive. A question
3 calling for a simply yes or no answer was never answered with
4 a yes or no. When I asked him why he was not disabled, why
5 did he continue to accept disability compensation. His answer
6 again was evasive and non-responsive. When I asked him if he
7 filed the claims for Veterans Administration disability
8 benefits, his answer was again evasive. He did not file the
9 claims. The VA filed the claims for him, he stated, or the
10 American Legion filed the claims. He just showed up for a
11 medical evaluation when he left the military and then suddenly
12 he started seeing disability benefits. He further testified
13 he did not understand the process and that it was all behind
14 the curtain. He didn't understand how the VA came to
15 decisions as to whether or not he should receive disability
16 benefits. At one point, Respondent testified he thought the
17 VA disability benefits was a thank you for your service.
18 However, that does not explain why the VA sought to recover
19 overpaying to the Respondent once he was operating, as he put
20 it, under orders.

21 There was a point in his testimony, as I noted,
22 Respondent maintained that the VA provided his disability
23 ratings and payments for him for possible future medical
24 problems. He agreed that if I believed his testimony that he
25 did not suffer from sleep apnea when he filed these medical

1 application forms at issue that the VA was providing
2 disability compensation or monetary payments to him for a
3 condition that he did not suffer.

4 Perhaps Respondent's testimony would be more palpable and
5 believable if there was some corroborating testimony coming
6 from say an attending physician or a representative from the
7 Veterans Administration to indicate that Mr. Johns' view of
8 why he was receiving disability benefits is correct. The only
9 evidence before me relative to the Respondent's case is his
10 own self-serving testimony, which I do not find credible.

11 What is troubling in this is that the Respondent
12 testified under oath in this matter after he admitted to the
13 allegations that he was receiving VA disability benefits for
14 the specific conditions that he argued at hearing he never
15 had.

16 I do not find his testimony that he, through AMAS, sought
17 to self-report and amend his false medical application forms
18 and set the record straight to be credible in any way. The
19 Respondent and his lawyers repeated the phrase that the AMAS
20 information was an amendment package prepared by AMAS.
21 Statements from AMAS and statements from the Respondent
22 indicates that it was not an attempt to amend and correct the
23 record. The word amendment is never mentioned in the
24 documents submitted by the Respondent through AMAS, nor is
25 there any reference to the 11 medical application forms that

1 Respondent admittedly falsified. The documents provided by
2 AMAS, Respondent was essentially doing a document dump in my
3 view. It is what lawyers call give them the warehouse.
4 Essentially, they gave all this information to the FAA.
5 There's no indication that the purpose of the submission was
6 to amend his falsified medical application forms in this
7 matter.

8 When asked about the lack of reference to the purported
9 amendments, he testified under oath and essentially blamed
10 AMAS. He relied on AMAS to his detriment. I find
11 Respondent's representation as to his attempts to self-report
12 and to amend his falsified medical applications and to set the
13 record straight to be just another misrepresentation by the
14 Respondent in this matter.

15 As to a specific point in issue in this case relative to
16 Respondent's no answer to question 18Y, I do not find the
17 Respondent's testimony when he answered no to question 18Y
18 because he thought the question was only referring to social
19 security disability benefits not to be credible. I do not
20 find that his claimed understanding to be reasonable or
21 credible to explain why he thought that way. He simply said
22 that the social security provides disability benefits. I
23 already knew that. What I didn't know is what Respondent was
24 thinking at the time he answered no to question 18Y. When
25 asked how he came to the conclusion that the question was

1 seeking social security disability benefits, again the
2 Respondent's answer was conclusive and non-persuasive.

3 I do not find credible Respondent's testimony that he
4 answered no to 18Y because he did not believe he was disabled.
5 His explanation apparently is reason in origin. It was never
6 discussed with Special Agent Frederick, nor raised in his
7 answers to the complaint. It was essentially brought up at
8 hearing. I do not find this testimony to be credible, and I
9 find it credible contrary to the clear and admitted evidence
10 that Respondent was receiving Veterans Administration
11 disability benefits.

12 As to his claim that he was never diagnosed with sleep
13 apnea, the Respondent was receiving disability benefits for
14 other medical conditions other than sleep apnea at the time he
15 answered no to question 18Y in each of his 11 medical
16 application forms.

17 This case is not about whether or not Respondent has or
18 does not have sleep apnea. This case is about his receipt of
19 the Veterans Administration disability benefits which he did
20 not report.

21 Respondent admits that he was receiving Veterans
22 Administration disability benefit payments during the times
23 when he falsified his answers to question 18Y.

24 Respondent is a graduate of the Air Force Academy. He
25 retired from the Air Force at the rank of Lieutenant Colonel.

1 He as flight commander with responsibility over 220 men and
2 women, and the Respondent is an air transport pilot. He has
3 the highest aviation rating that can be obtained. That type
4 of rating cannot be obtained by just anyone. Respondent is
5 clearly an intelligent, experienced, and worldly individual.
6 I cannot believe that he misunderstood the meaning of a
7 question like 18Y.

8 Based on all of the evidence before me and based on the
9 preponderance of the evidence, I find that at the time
10 Respondent admitted that he falsified his answers to question
11 18Y in each of the 11 medical applications at issue in this
12 case, Respondent did so with knowledge of the falsity of that
13 fact.

14 Thus, based on upon the evidence before me, I find the
15 Administrator has proven the third prong of Hart v. McLucas
16 test by a preponderance of the evidence. Having considered
17 all of the Respondent's admissions, the testimony, and
18 evidence at hearing, I find the Administrator has established
19 all of the elements of the Hart v. McLucas test in this case
20 by preponderance of the evidence.

21 I now turn to the Respondent's affirmative defenses.

22 The first affirmative defense is the Respondent did not
23 intend to deceive anyone because he did not have the requisite
24 knowledge that his response to 18Y on the FAA form 8500-8 was
25 false. Respondent's error was an honest mistake. I have

1 found otherwise, which I hope is clear in this hearing.
2 Therefore, I must find the Respondent did not prove this
3 affirmative defense.

4 The second affirmative defense is the Respondent relied
5 on the assistance and counsel of his medical advocate to his
6 detriment. As has been borne out by the testimony, no one
7 counseled Respondent as to how to answer 18Y in the 11 medical
8 applications he filed in this case. Respondent presented no
9 evidence relative to this affirmative defense other than his
10 testimony that AMAS is responsible for any negative or adverse
11 view of the AMAS admission that the Respondent misrepresented
12 to be an amendment package to correct the record. This
13 affirmative defense has no bearing on Respondent's false and
14 fraudulent answers to question 18Y on his 11 medical
15 applications at issue in this case.

16 I will discuss the Respondent's third affirmative defense
17 in my discussion of the propriety of the sanction in this
18 case. I will now make specific findings of facts and
19 conclusions of law, so I will use the Administrator's
20 complaint as previously noted.

21 On the record the Respondent has admitted to all of the
22 allegations in the Administrator's complaint except for
23 allegation in paragraph 12 and paragraph 17. I find that the
24 Administrator has proven by a preponderance of the evidence
25 that when Respondent answered no to Item 18Y that he knew his

1 answers were false. I have found that at the times that he
2 provided the no answers, he provided the false representation
3 with knowledge of the falsity that it had.

4 I find that the Administrator has proven by a
5 preponderance of the evidence the allegations in paragraph 17.
6 You knew that the certification of your medical certificate
7 application was false when you signed Item 20. I find that
8 each one of those 11 medical applications that Respondent
9 falsified as to 18Y that he also falsified as to his
10 certification on Item 20 for each of those 11 medical
11 application forms.

12 Thus, my conclusion, based on my review of the evidence
13 in this case, I find that the Administrator has proven by a
14 preponderance of reliable, probative, and credible evidence
15 that the Respondent violated 14 C.F.R. 67403(k)(1), 14 C.F.R.
16 67403(b) and 14 C.F.R. 67403(c).

17 The Administrator has proven by a preponderance of the
18 evidence Respondent made the same false statement with
19 knowledge of the falsity of that fact when he answered no to
20 question 18Y on his medical application forms when he
21 completed those forms dated December 17th, 2008, June 3rd,
22 2009, June 24th, 2013, January 6th, 2014, July 24th, 2014,
23 February 2nd, 2015, June 8th, 2015, December 9th, 2015, June 1st,
24 2016, June 13th, 2017, and June 6th, 2018.

25 I now turn to the sanction imposed by the Administrator

1 in this case.

2 In addressing the issue of sanctions in this case, it
3 must be noted that on August 3rd, 2012 Public Law 112-153,
4 known as the Pilots Bill of Rights, was signed into law by the
5 President of the United States and became effective
6 immediately.

7 The Pilots Bill of Rights specifically -- from 49 U.S.C.
8 44709 and 44710, language that in cases involving amendments,
9 modifications, extensions, and revocations of certificates,
10 the Board is bound all validly adopted interpretations of laws
11 and regulations the Administrator carries out and of written
12 agency policy guidelines available to the public the sanctions
13 can be imposed under this section unless the Board finds that
14 an interpretation is arbitrary, capricious, or otherwise not
15 in accordance with the law.

16 Those I am no longer bound to give deference to the FAA
17 by statute and the passage of the Pilots Bill of Rights, the
18 FAA is entitled to same judicial deference due to all federal
19 administrative agencies under the Supreme Court decision in
20 *Martin v. Occupational Safety and Health Review Commission*,
21 *et. al.*, 499 U.S. 144 and 111 S. Ct. 1171.

22 In applying the principles of judicial deference to the
23 interpretation of laws, regulations, and policies that the FAA
24 Administrator carries out, I must now analyze and weigh the
25 facts and circumstances in each case to determine if the

1 sanctions elected by the Administrator is appropriate.

2 In this case, the Administrator has moved into evidence
3 the sanction guidelines that were applicable at the time
4 Respondent made his false and fraudulent entries in his 11
5 medical application forms at issue in this case. The
6 Administrator also admitted a current sanction guideline to
7 demonstrate that the sanction guidelines have not changed
8 relative to the type of violation in this case.

9 The Administrator argues the revocation of Respondent's
10 airman medical certificate is the appropriate remedy in this
11 case. The Administrator argues that deference should be shown
12 to the Administrator's choice of sanction. The Administrator
13 argues that the NTSB case law specifically has held that even
14 one instance of falsification by an airman is grounds for
15 revocation.

16 The Respondent argued in his affirmative defense that the
17 Respondent took corrective action; 1) before the FAA's
18 discovery of the violation; 2) after the discovery but before
19 legal enforcement action was initiated; and 3) after legal
20 enforcement action was taken to amend his previous answers to
21 question 18Y on his applicable FAA form 8500-8 applications,
22 which are the subject of this matter.

23 I have numbered those specific sentences to make it clear
24 for this decision. As such, according to the Respondent, the
25 Respondent's corrective action shouldn't mitigate any

1 sanctions imposed upon him in this manner.

2 The testimony and evidence in this case establishes that
3 the Respondent provided documents to the FAA through his
4 association with AMAS well after he was informed by Special
5 Agent Frederick that his answers to question 18Y on his
6 medical application forms were under investigation. It is
7 clear that he did not self-report as the Respondent and his
8 lawyers represented that the package presented to the FAA by
9 AMAS was an amendment and an attempt to correct all of the
10 falsified medical application forms in this case.

11 Respondent testified he wanted to amend the 11
12 applications at issue in this case and correct the record.
13 Throughout his testimony and through questions asked by his
14 attorney of Respondent and other witnesses, the package was
15 referred to as an amendment package. In fact, the so-called
16 amendment package did not reference the word amendment, nor
17 does it mention or identify the 11 falsified medical
18 applications in this case, nor does Respondent make any such
19 reference to amending the 11 falsified medical applications in
20 his personal statements he submitted to the FAA and AMAS.

21 I have discussed specific wording as to the intent of the
22 information package that was submitted by AMAS in my decision,
23 and I will not repeat it here again. I find that Respondent's
24 sworn testimony and reference to his collection of documents
25 provided to the FAA as an amendment package is misleading. So

1 I do not find the purported disclosure to be a mitigating
2 factor, but instead I find it to be an aggravating factor and
3 is reflective of a lack of trustworthiness of the Respondent
4 and Respondent's case.

5 I find the Administrator's argument that the Respondent
6 cannot be trusted to provide trusted and reliable information
7 to be compelling, and that fact has been borne out and
8 established by the evidence in this case.

9 I find, therefore, that the sanctions sought by the
10 Administrator is appropriately warranted in the public
11 interest in air commerce and air safety.

12 I'll ask the court reporter to start a new page, and I
13 will issue an order in this case.

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ORDER

It is HERBY ORDERED that:

1. The Emergency Order of Revocation and the complaint herein is hereby affirmed as issued.

2. Respondent's airline transport pilot certificate No. 3082215 and all airman medical certifications issued on June 6th, 2018 and June 24th, 2018 and any other airman medical certificates and unexpired airman medical certificates issued to the Respondent are revoked.

This order is entered on the 27th day of January in Washington, D.C.

ALFONSO J. MONTAÑO

Chief Administrative Law Judge

APPEAL

1 JUDGE MONTAÑO: That completes my oral decision in this
2 case. The parties have indicated that they have received the
3 appeal rights via email. I will inform the Respondent that
4 you do have a right to appeal. There are specific deadlines
5 that your attorney must comply with. The attorneys have
6 represented other airmen in these proceedings.

7 The Administrator also has a right to appeal should the
8 Administrator choose to do that.

9 Certainly, I would ask that the Respondent and the
10 Administrator be mindful of the deadlines. The Board is not
11 very lenient as far as timelines relative to appeals.

12 If there is an appeal to the full Board, as counsel for
13 the parties know, Mr. Johns, that appeal would be in the form
14 of briefs filed by your lawyer or the Administrator's lawyer
15 arguing that my decision is incorrect whether it was
16 discretion or I made an error of law.

17 The Board after hearing the appeal may decide to affirm
18 my decision, reverse my decision, or send back the decision
19 for me to address something that I did not address in the
20 course of this decision. From there you have the right to
21 file an appeal either to the Federal District Court or the
22 Circuit Court of Appeals for your circuit, or in the
23 alternative, the District of Columbia Circuit Court of
24 Appeals, and from there, of course, there's an appeal to, if
25 appropriate, to the Supreme Court.

1 Essentially, those are the appeal rights with the
2 timelines. That is my oral initial decision in this case, and
3 I will at this point go off the record and end this telephone
4 conversation.

5 (Whereupon, at 10:35 a.m. EST, the hearing in the above-
6 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

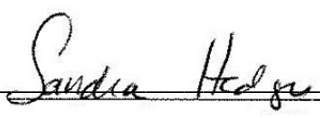
IN THE MATTER OF: Bradley Johns

DOCKET NUMBER: SE-30780

PLACE: Via Zoom videoconference

DATE: January 27, 2022

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.



Sandy Hedges
Official Reporter