

SERVED: July 21, 2023

NTSB Order No. EA-5959

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 20 of July, 2023

_____)	
POLLY TROTTENBERG, ¹)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-31083
)	
ETHAN J. HOBBS,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

I. Background

The Administrator appeals the oral initial decision of Administrative Law Judge Alisa M. Tapia, issued on October 5, 2022.² By that decision, the law judge determined the Administrator

¹ The original caption for this matter was Billy Nolen, Acting Administrator, Federal Aviation Administration v. Ethan J. Hobbs.

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

did not prove respondent violated 14 C.F.R. § 64.59(a)(1)³ and 14 C.F.R. § 61.59(a)(2)⁴ by changing an entry in his student's logbook. The Administrator timely appealed. For the reasons set forth below, we deny the Administrator's appeal and affirm the law judge's decision.

A. Facts

Respondent is a holder of commercial pilot and flight instructor certificates.⁵ In 2021, respondent was employed by JW Aviation ("JWA"), a flying school located at Bolingbrook's Clow Airport ("Clow").⁶ At that time, Alexander Falco-Sonnenberg was a student at JWA receiving from respondent lessons for a private pilot certificate.⁷ To be eligible for a private pilot single-engine rating, a student must complete at least five hours of solo cross-country flight time before applying for the practical test, or a check ride.⁸ Mr. Falco-Sonnenberg was scheduled to undergo his check ride with designated pilot examiner ("DPE") Keith McGill on September 10, 2021.⁹ On September 8, 2021, in preparation for the check ride, Mr. Falco-Sonnenberg reviewed his logbook with respondent and filled out his integrated airman certification and rating application ("IACRA") form.¹⁰ Upon totaling the flight hours for the IACRA form, respondent discovered that Mr. Falco-Sonnenberg was short on his solo cross-country hours.¹¹ Using Wite-

³ 14 C.F.R. 64.59(a)(1) prohibits any person from making or causing to be made "[a]ny fraudulent or intentionally false statement on any application for a certificate, rating, authorization, or duplicate thereof, issued under this part."

⁴ 14 C.F.R. 64.59(a)(2) prohibits any person from making or causing to be made "[a]ny fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part."

⁵ Compl. ¶ 1; Answer ¶ 1.

⁶ Tr. at 142, 178.

⁷ *Id.* at 19, 29-30.

⁸ *Id.* at 45. *See* 14 C.F.R. §§ 61.109(a)(5)(i), 61.103(g).

⁹ Exh. A-3 at 1. A DPE is a person who performs pilot examinations on the Administrator's behalf. Tr. at 43.

¹⁰ Compl. ¶ 5; Answer ¶ 5.

¹¹ Tr. at 28, 156, 160.

Out correction tape, respondent changed the logged hours for a flight on July 18, 2021 (“July 18 entry”), corresponding to aircraft N8618E, from 1.7 hours to 2.3 hours.¹² The only other entry for solo cross-country flights indicated 2.7 hours on July 19, 2021.¹³ Thus, respondent’s change gave Mr. Falco-Sonnenberg exactly the 0.6 solo cross-country hours he needed to meet the five-hour requirement.¹⁴ In addition, on September 9, 2021, respondent signed Mr. Falco-Sonnenberg’s IACRA form, attesting that respondent had “personally instructed the applicant and consider[ed] this person ready to take the test.”¹⁵

On September 10, 2021, the day of the scheduled check ride, DPE McGill reviewed Mr. Falco-Sonnenberg’s logbook and noticed the change of the July 18 entry.¹⁶ DPE McGill went to JWA’s dispatch office to review the invoice for the July 18 flight, and the invoice showed that the flight took only 1.7 hours.¹⁷ DPE McGill did not perform the check ride and reported the change to Douglas Lewis, an Aviation Safety Inspector in the Greater Chicago flight standards district office.¹⁸ Specifically, DPE McGill reported that when he questioned respondent about the change, respondent explained that the July 18 flight seemed longer based on when Mr. Falco-Sonnenberg texted him upon landing.¹⁹ DPE McGill reported that respondent also explained that he checked the July 18 flight time in Flight Schedule Pro, but mistakenly recorded the expected

¹² Exh. A-1 at 1-2; Tr. at 156-157; Compl. ¶¶ 4-5; Answer ¶¶ 4-5.

¹³ Exh. A-1 at 1-2.

¹⁴ Exhs. A-1 at 1-2; A-3 at 1.

¹⁵ Compl. ¶ 8; Answer ¶ 8.

¹⁶ Exh. A-3 at 1.

¹⁷ Exh. A-3 at 1.

¹⁸ Exh. A-3 at 1-2.

¹⁹ Exh. A-3 at 1. Flight Schedule Pro is an online application used to document and invoice flights. Tr. at 26, 123-124.

flight time of 2.3 hours instead of actual flight time.²⁰ DPE McGill reported that upon reviewing Flight Schedule Pro, the expected flight time was 2.5 hours, not 2.3 hours.²¹

On September 30, 2021, Inspector Lewis issued respondent a letter of investigation, requesting respondent to provide a statement.²² On October 10, 2021, respondent submitted his statement, explaining that at the time he made the change in the July 18 entry, he believed that Mr. Falco-Sonnenberg had flown aircraft N3333W, not the N8618E.²³ Respondent explained that while the N8618E had a Hobbs meter, the N3333W only had a tachometer.²⁴ To receive the correct flight time, the tachometer time must be multiplied by 1.3.²⁵ After multiplying the tachometer time of 1.7 by 1.3, he received 2.21 hours and rounded them up to 2.3.²⁶ Respondent explained that he believed that the July 18 entry was incorrect because Mr. Falco-Sonnenberg had forgotten to perform the multiplication.²⁷ Respondent admitted that his belief about Mr. Falco-Sonnenberg flying the N3333W on July 18 was mistaken, and that he did not verify it in Flight Schedule Pro or the JWA's invoices prior to changing the entry.²⁸ Respondent asserted that he was convinced of the accuracy of the change at the time he made it, and that his mistake was partly due to exhaustion from a very busy workweek.²⁹ Respondent explained that he was exhausted from multiple flights he made to Mackinac Island to help repair a stranded aircraft in

²⁰ Exh. A-3 at 1-2.

²¹ Exh. A-3 at 2.

²² Exh. A-7.

²³ Exh. A-5.

²⁴ Exh. A-5. A Hobbs meter measures real time between the time the aircraft starts moving until it stops. Tr. at 46-47. A tachometer measures the number of propeller revolutions. Tr. at 150-151.

²⁵ Tr. at 92.

²⁶ *Id.* at 162.

²⁷ Exh. A-5.

²⁸ *Id.*

²⁹ *Id.*

bad weather.³⁰ On October 4, 2021, Mr. Falco-Sonnenberg submitted a statement, indicating that prior to changing the July 18 entry, respondent had “pulled up the records of the [July 18 flight] and he found the flight length to be 1.7 hours.”³¹ Mr. Falco-Sonnenberg noted that respondent mistakenly believed that Mr. Falco-Sonnenberg conducted the July 18 flight in the N3333W, which does not have a Hobbs meter, and that respondent’s mistake was due to exhaustion from numerous long flights that week.³²

B. Procedural History

On March 9, 2022, the Administrator issued an emergency order revoking respondent’s commercial pilot and flight instructor certificates. The Administrator’s emergency order of revocation became the complaint in this case and formed the basis for the hearing in this matter.³³ The complaint alleged that respondent’s change of the July 18 logbook entry and his attestation on the IACRA form violated 14 C.F.R. §§ 61.59(a)(2) and 64.59(a)(1), respectively, because they were false, in reference to a material fact, and made by respondent intentionally.³⁴ The complaint concluded that respondent lacked the qualifications necessary to hold his airman mechanic certificate, and that safety in air commerce or air transportation and public interest required revocation of the certificate.³⁵ In his timely answer, filed on March 22, 2022, respondent admitted that he changed the July 18 entry, that he attested on the IACRA form, and that these statements were material.³⁶ However, respondent denied that the change of the entry and the

³⁰ *Id.*

³¹ Exh. A-2.

³² *Id.*

³³ Respondent waived the expedited procedures applicable to emergency cases on March 28, 2022.

³⁴ Compl. ¶¶ 5-10.

³⁵ Compl. at 3.

³⁶ Answer ¶¶ 5, 7, 8, 10.

attestation were intentionally false.³⁷

The law judge conducted a hearing on May 24 and May 27, 2022. At the hearing, the Administrator called as witnesses Mr. Falco-Sonnenberg, DPE McGill, and Inspector Lewis. Respondent called as a witness Wayne Brazinski, the owner of JWA, and testified on his own behalf.

1. Testimony of Alexander Falco-Sonnenberg

Mr. Falco-Sonnenberg testified that he conducted the solo cross-country flight on July 18 in the N8618E, which has a Hobbs meter.³⁸ He stated that he initially recorded in his logbook 1.7 hours of solo cross-country hours corresponding to the July 18 flight.³⁹ He indicated that he met with respondent to go over the logbook on one of the days leading up to his September 10 check ride.⁴⁰ Mr. Falco-Sonnenberg stated that respondent appeared fatigued due to a busy schedule, and that respondent told Mr. Falco-Sonnenberg that he was tired.⁴¹ Mr. Falco-Sonnenberg stated that during this meeting with respondent, he realized he was short on the solo cross-country hours.⁴² He explained that respondent told him that the July 18 entry did not reflect the calculation necessary to convert the tachometer hours.⁴³ Mr. Falco-Sonnenberg denied reviewing the JWA invoices to verify what airplane he had flown on July 18.⁴⁴ He explained that he never reviewed JWA invoices because his training was covered by a scholarship.⁴⁵ He further testified

³⁷ Answer ¶¶ 6, 9.

³⁸ Tr. at 26.

³⁹ *Id.* at 21, 24-25.

⁴⁰ *Id.* at 27, 35.

⁴¹ *Id.* at 36-37.

⁴² *Id.* at 28.

⁴³ *Id.*

⁴⁴ *Id.* at 29-30.

⁴⁵ *Id.* at 29-30.

that he and respondent did not change the airplane number due to an oversight.⁴⁶ He denied changing the July 18 entry just so that he could meet the five-hour requirement.⁴⁷ He explained that there was no urgency to meeting the five-hour requirement because he could have made up any missing hours the day before the scheduled check ride.⁴⁸

Mr. Falco-Sonnenberg testified that when DPE McGill questioned him on September 10 about the basis for the change in the July 18 hours, he told DPE McGill that he “wasn’t sure.”⁴⁹ Mr. Falco-Sonnenberg acknowledged that on July 9, 2021, he piloted the N3333W with respondent onboard, and that the N3333W only had a tachometer and did not have a Hobbs meter.⁵⁰ Mr. Falco-Sonnenberg explained that he did not record the July 9 flight in the logbook because it was too short, and because he did not need those hours.⁵¹

2. *Testimony of Keith McGill*

DPE McGill testified that he had been employed at Lewis University for 27 years as Associate Professor, Chief Pilot, and Director of Flight Training and held an airline transport pilot certificate, a flight instructor certificate, and a remote pilot certificate.⁵² In 2021, he served as a DPE, having performed over 300 pilot examinations.⁵³

DPE McGill testified that on September 10, 2021, he met with Mr. Falco-Sonnenberg to perform a check ride examination.⁵⁴ He stated that he reviewed Mr. Falco-Sonnenberg’s logbook

⁴⁶ *Id.* at 37.

⁴⁷ *Id.* at 35.

⁴⁸ *Id.* at 38-39.

⁴⁹ *Id.* at 32.

⁵⁰ *Id.* at 25-26.

⁵¹ *Id.* at 27.

⁵² *Id.* at 42-44.

⁵³ *Id.* at 43.

⁵⁴ *Id.* at 44.

and noticed that the July 18 entry had been recorded over Wite-Out correction tape.⁵⁵ He stated that he shone a flashlight underneath the Wite-Out and saw that the previous entry was 1.7 hours.⁵⁶ He indicated that pilots commonly drew a line over an erroneous entry and initialed who made the change, but agreed that he had previously seen instances of pilots using Wite-Out correction tape.⁵⁷

DPE McGill testified that Mr. Falco-Sonnenberg “wasn’t quite sure” why the July 18 entry was changed; Mr. Falco-Sonnenberg only told DPE McGill that the entry was initially made in error but did not explain what the error was or why 2.3 hours was the correct number.⁵⁸ DPE McGill stated that he reviewed JWA’s invoices to confirm that the July 18 flight took 1.7 hours.⁵⁹ Since the invoices showed that Mr. Falco-Sonnenberg was 0.6 hours short of the solo cross-country requirement, DPE McGill did not proceed with the examination.⁶⁰

DPE McGill testified that he then met with respondent, who told DPE McGill that the July 18 entry was changed because “the flight seemed longer than 1.7 [hours].”⁶¹ DPE McGill noted it was unclear to him how respondent knew the flight was shorter since it was a solo flight, and why the allegedly short time of the flight came to light almost two months after the flight.⁶² DPE McGill further stated that respondent also told him that respondent mistakenly changed the entry to the flight’s expected time – the amount of time the aircraft was scheduled for – as it was reflected in Flight Schedule Pro.⁶³ DPE McGill stated that Flight Schedule Pro showed that the

⁵⁵ *Id.* at 46.

⁵⁶ *Id.* at 49, 56-57.

⁵⁷ *Id.* at 46, 56.

⁵⁸ *Id.* at 48-49.

⁵⁹ *Id.* at 50.

⁶⁰ *Id.*

⁶¹ *Id.* at 51.

⁶² *Id.*

⁶³ *Id.* at 51-52.

July 18 flight was conducted in the N8618E, and its expected time was 2.5 hours, not 2.3 hours.⁶⁴ DPE McGill indicated that neither Mr. Falco-Sonnenberg nor respondent mentioned anything about a Hobbs meter.⁶⁵ DPE McGill testified that he was not sure how the error was created and agreed that he had not come to the conclusion that respondent made the change with an intent to deceive.⁶⁶

3. *Testimony of Douglas Lewis*

Inspector Lewis testified that he had been employed as an Aviation Safety Inspector in the Greater Chicago FSDO for 5 years, where he oversaw DPEs and Part 91 and Part 135 certificate holders.⁶⁷ He held an airline transport pilot, a flight instructor, a flight instrument instructor, and a multi-engine instructor certificates.⁶⁸ He underwent FAA investigations training, which included research, observation, and record documentation and conducted 90 pilot deviation investigations and 14 occurrences investigations.⁶⁹ He stated that the current case involved a pilot deviation.⁷⁰

Inspector Lewis testified that on September 10, 2021, he received an e-mail from DPE McGill informing him of the events surrounding the change of Mr. Falco-Sonnenberg's logbook.⁷¹ Based on the e-mail, he determined "the story didn't add up" and further investigation was needed.⁷² He stated that he sent a letter of investigation to Mr. Falco-Sonnenberg and

⁶⁴ *Id.* at 52, 61.

⁶⁵ *Id.* at 52.

⁶⁶ *Id.* at 59-60.

⁶⁷ *Id.* at 63-64, 82.

⁶⁸ *Id.* at 64.

⁶⁹ *Id.* at 64, 83, 85-86. An occurrence is usually an event that does not involve harm, such as a runway incursion; whereas pilot deviations commonly involve airspace deviations that violate FAA regulations. *Id.* at 83.

⁷⁰ *Id.* at 84.

⁷¹ *Id.* at 65, 68.

⁷² *Id.* at 65-66.

respondent, receiving replies from both with their explanations of the events.⁷³ Inspector Lewis testified that he found respondent's explanation doubtful because respondent did not mention anything to DPE McGill about Mr. Falco-Sonnenberg flying a different aircraft, the Hobbs meter, and the multiplication of the tachometer hours.⁷⁴ Inspector Lewis also testified it was unclear to him why respondent did not change the aircraft number at the same time respondent changed the hours if respondent truly believed Mr. Falco-Sonnenberg had flown a different aircraft on July 18.⁷⁵ Inspector Lewis further indicated that Mr. Falco-Sonnenberg described in his response a third version of the events, where respondent took 1.7 hours from Flight Schedule Pro and multiplied it by 1.3."⁷⁶

Inspector Lewis testified that on October 21, 2021, he spoke with respondent in a phone call and typed the notes from this conversation into a memorandum.⁷⁷ He did not sign the memorandum because a signed memorandum could not be later edited for any spelling or grammatical errors.⁷⁸ He admitted that he did not ask respondent during the phone call why respondent did not change the aircraft number.⁷⁹ Inspector Lewis further testified that respondent followed-up via e-mail, which included the details of the July 9, 2021, flight that was conducted in the N3333W.⁸⁰ Inspector Lewis agreed that he erred in failing to include respondent's e-mail in the enforcement investigative report (EIR), but explained that the e-mail was not relevant to the investigation since the July 9 flight was not reflected in the logbook; even if it was, its hours

⁷³ *Id.* at 66, 68.

⁷⁴ *Id.* at 68-70.

⁷⁵ *Id.* at 68-69.

⁷⁶ *Id.* at 71-72.

⁷⁷ *Id.* at 72-74, 94-95.

⁷⁸ *Id.* at 96-97.

⁷⁹ *Id.* at 103-104.

⁸⁰ *Id.* at 106-107. *See* Exh. R-1.

would not have been enough to qualify Mr. Falco-Sonnenberg for the check ride, and the e-mail did not address why after multiplying 1.2 by 1.3 and receiving 2.21, respondent rounded up to 2.3.⁸¹

Inspector Lewis testified that his investigation concluded that respondent changed the hours to qualify Mr. Falco-Sonnenberg for the check-ride.⁸² He stated that this conclusion was based on the following facts: Flight Schedule Pro showed 2.5 expected flight hours, not 2.3; respondent's failure to change the aircraft number in the logbook; and respondent's decision to round up the multiplication to 2.3, without which Mr. Falco-Sonnenberg would have been short of the required hours.⁸³ Inspector Lewis concluded that respondent's inconsistent explanations were an attempt to come up with justifications for the change in the July 18 entry.⁸⁴ He determined respondent's falsification of the logbook demonstrated respondent lacked qualification to hold his certificates, warranting a revocation under the FAA sanction guidance.⁸⁵ Inspector Lewis agreed that he based his conclusions on circumstantial evidence.⁸⁶ He noted that he differentiated intentional falsification from simple mistakes by using the evidence gathered and critical thinking during an investigation.⁸⁷ He agreed that there was no definition of "simple mistake" that he relied on when determining whether an act was a simple mistake or an intentional falsification.⁸⁸

⁸¹ Tr. at 107, 123.

⁸² *Id.* at 76.

⁸³ *Id.* at 77, 115.

⁸⁴ *Id.* at 113.

⁸⁵ *Id.* at 77-80, 84, 114.

⁸⁶ *Id.* at 115-117.

⁸⁷ *Id.* at 124-126.

⁸⁸ *Id.* at 125.

4. *Testimony of respondent*

Respondent testified that he received his flight instructor certificate in December 2019, and that Mr. Falco-Sonnenberg was one of his students.⁸⁹ Respondent stated that on July 9, 2021, he and Mr. Falco-Sonnenberg flew in the N3333W to prepare Mr. Falco-Sonnenberg for his solo cross-country flight on July 18, 2021.⁹⁰ Respondent explained that the N8618E, which Mr. Falco-Sonnenberg usually flew, was scheduled to be unavailable for July 18.⁹¹ He stated that the July 9 flight was only one lap in a pattern and took .17 hours.⁹² He indicated that he multiplied .17 by 1.3 and received 0.2 hours, which he recorded in the electronic logbook.⁹³

Respondent testified that on September 6, 2021, he spent approximately seven hours flying to Mackinac Island and back as well as four-to-five hours on the island helping rescue another JWA instructor who was stranded after losing engine power.⁹⁴ He testified that on September 7, 2021, he worked eight or nine hours for Troy Township, his second job.⁹⁵ He testified that on September 8, 2021, he flew to Mackinac Island to help fix the stranded airplane.⁹⁶ He stated that the day was cloudy and rainy, and he had difficulty properly fixing the engine, so he flew the airplane to Mackinaw City for maintenance.⁹⁷ He testified that he returned to Clow when it was dark, and met Mr. Falco-Sonnenberg there to review his logbook.⁹⁸

⁸⁹ *Id.* at 141-142.

⁹⁰ *Id.* at 145. *See* Exh. R-3.

⁹¹ Tr. at 145.

⁹² *Id.* at 148.

⁹³ *Id.* at 172-173. *See* Exh. R-2.

⁹⁴ Tr. at 151-153.

⁹⁵ *Id.* at 153-154.

⁹⁶ *Id.* at 154.

⁹⁷ *Id.* at 154-155.

⁹⁸ *Id.* at 155-156.

Respondent testified that the July 18 flight stood out to him because he believed that Mr. Falco-Sonnenberg conducted the flight in the N3333W but did not multiply the tachometer time by 1.3.⁹⁹ Respondent stated that he then performed the multiplication and made the change in the logbook using Wite-Out correction tape.¹⁰⁰ Respondent testified that he had several reasons to believe that the July 18 flight was longer: Mr. Falco-Sonnenberg sent respondent a text message notifying respondent of his return to Clow, something that respondent's students typically did; the July 18 flight to Rockford, Illinois, should have taken longer than it did; and another instructor reassigned Mr. Falco-Sonnenberg to the N8618E.¹⁰¹ While such reassignment was frequent practice at JWA, respondent was not aware this had occurred on July 18.¹⁰²

Respondent further testified that he did not verify the JWA records prior to making the change in the July 18 entry because he was "extremely exhausted" from his busy workweek.¹⁰³ Respondent explained that because respondent knew he had assigned Mr. Falco-Sonnenberg to fly the N3333W on July 18 and because respondent was fatigued, changing the logbook "seemed like the obvious answer."¹⁰⁴ He admitted that he made "a very crucial error" and that he should have verified everything.¹⁰⁵ He testified that even though the calculation rendered 2.21 hours, due to fatigue he rounded the hours up instead of rounding them down.¹⁰⁶ Respondent asserted that he would never intentionally falsify a logbook because it is not ethically or morally right.¹⁰⁷

⁹⁹ *Id.* at 156, 160.

¹⁰⁰ *Id.* at 156-157.

¹⁰¹ *Id.* at 158-159, 160, 162, 167.

¹⁰² *Id.* at 162.

¹⁰³ *Id.* at 160, 173.

¹⁰⁴ *Id.* at 161.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 162, 172.

¹⁰⁷ *Id.* at 163.

Respondent testified that he expected any logbook entry to be scrutinized by a DPE, especially those related to a check ride.¹⁰⁸ Respondent indicated that, out of nervousness, he forgot to mention to DPE McGill any information about assigning Mr. Falco-Sonnenberg to the N3333W and the Hobbs meter.¹⁰⁹ Respondent testified that after his meeting with DPE McGill, respondent searched the records and realized that Mr. Falco-Sonnenberg was reassigned to fly the N8618E.¹¹⁰ He asserted that when he made the change in the logbook, he fully believed that Mr. Falco-Sonnenberg flew the N3333W and forgot to multiply the tachometer time by 1.3.¹¹¹ Respondent denied knowing the falsity of the change in the July 18 entry at the time he made it.¹¹² Respondent acknowledged that in his written statement to Inspector Lewis, he did not mention anything about the expected time of 2.5 hours or assigning the N3333W to Mr. Falco-Sonnenberg's July 18 flight.¹¹³

5. Testimony of Wayne Brazinski

Mr. Brazinski was the president of JWA, where he oversaw day-to-day operations, including hiring and directing the activities of flight instructors and assigning students to the instructors.¹¹⁴ Mr. Brazinski testified that respondent's duties at JWA included training students to fly airplanes and assisting in recovering stranded aircraft.¹¹⁵ He testified that the N3333W and the N8618E were both Piper Cherokee aircraft, but that only the N8618E had a Hobbs meter.¹¹⁶ Mr. Brazinski testified that on September 6, 2021, respondent flew a mechanic to Mackinac

¹⁰⁸ *Id.* at 166.

¹⁰⁹ *Id.* at 169, 174.

¹¹⁰ *Id.* at 169.

¹¹¹ *Id.* at 170.

¹¹² *Id.* at 170-171.

¹¹³ *Id.* at 174-175.

¹¹⁴ *Id.* at 178.

¹¹⁵ *Id.* at 179.

¹¹⁶ *Id.* at 180.

Island to evaluate a stranded aircraft, and on September 8, 2021, respondent returned to Mackinac Island to help repair it.¹¹⁷ Mr. Brazinski indicated that respondent worked on the stranded aircraft outdoors in bad weather.¹¹⁸

C. Law Judge's Decision

On June 1, 2022, the law judge issued an oral initial decision, finding that the Administrator proved all the allegations in the complaint, concluding that respondent made an intentionally false change of the student logbook on September 8 and that he made an intentionally false attestation on September 9, in violation of 14 C.F.R. §§ 61.59(a)(1) and 61.59(a)(2).¹¹⁹ While the law judge expressly found all witnesses credible, the law judge did not make an express credibility determination in regards to respondent, but indicated that respondent was “forthcoming” and “overall sincere in his testimony.”¹²⁰ Noting that this case was “unique” and “troubling,” the law judge did not make a finding regarding the propriety of the Administrator’s sanction and instead instructed the parties to submit briefs on the issue.¹²¹

On October 5, 2022, the law judge issued a new oral initial decision. In this decision, the law judge indicated that she had informed the parties on September 23, 2022, that the June 1, 2022, oral initial decision was “void,” and that the new decision “overrides” it.¹²² The law judge explained that the June 1, 2022, decision was “tentative” and that, upon reading the parties’

¹¹⁷ *Id.* at 182-183.

¹¹⁸ *Id.* at 183-184.

¹¹⁹ June 1, 2022, Oral Initial Decision at 251.

¹²⁰ *Id.* at 242.

¹²¹ *Id.* at 252.

¹²² October 5, 2022, Oral Initial Decision at 257-258. We recognize that because the law judge had not considered the issue of sanction in her June 1, 2022, oral initial decision, this decision did not represent a final disposition of this case. We also recognize that a law judge may have valid reasons for revising his or her decision before it is perfected. However, because such practice could carry a risk of confusion for the parties and for the Board on appeal, we believe it is advisable for the law judges to issue all their findings in one, final decision.

briefs on the issue of sanction, she found the record did not support a revocation or a suspension.¹²³ She further explained that she had “several lingering questions” and reviewed the official transcript and the evidence as a whole.¹²⁴

In the October 5, 2022, decision, the law judge found that the Administrator failed to prove that respondent made an intentionally false change of the student logbook on September 8 or that respondent made an intentionally false attestation on September 9.¹²⁵ Thus, the law judge concluded that respondent did not violate 14 C.F.R. §§ 61.59(a)(1) and 61.59(a)(2).¹²⁶ In arriving at this conclusion, the law judge summarized the regulatory violations and the factual allegations in the complaint; discussed respondent’s admissions and denials in his answer and his affirmative defenses; noted the admitted exhibits; summarized witness testimony and the parties’ closing arguments; assessed the credibility of respondent and the witnesses; and discussed the *Hart v. McLucas* standard.¹²⁷

Specifically, the law judge determined Mr. Falco-Sonnenberg was credible, noting he answered questions without hesitation, his demeanor was comfortable, his testimony was consistent with the evidence, and he was honest and sincere.¹²⁸ The law judge determined DPE McGill was credible, given his comfortable and straightforward demeanor, his adherence to the facts, and his testimony that he did not find respondent was intentionally deceptive.¹²⁹ The law judge further determined Inspector Lewis to be credible because he was knowledgeable about the Federal Aviation Regulations, provided straightforward testimony, and admitted responsibility

¹²³ *Id.* at 293.

¹²⁴ *Id.* at 293-294.

¹²⁵ *Id.* at 304-307.

¹²⁶ *Id.* at 307.

¹²⁷ *Id.* at 258.

¹²⁸ *Id.* at 286-287.

¹²⁹ *Id.* at 287.

for the errors and omissions in his investigation.¹³⁰ The law judge found Mr. Brazinski credible, noting his testimony was helpful, consistent with the evidence, and lacking bias or motive.¹³¹

The law judge finally found respondent credible, explaining that his testimony was corroborated with evidence, “sincere and forthcoming,” never evasive, and detailed.¹³²

The law judge determined that respondent’s change of the July 18 entry and the attestation that Mr. Falco-Sonnenberg was ready for the check ride constituted false representations in reference to a material fact.¹³³ However, the law judge determined that respondent did not make these false representations intentionally.¹³⁴ The law judge indicated that respondent’s “remarkably challenging day” on September 8, consisting of flying for nearly 15 hours and diagnosing engine problems at a “primitive airport” and “under rainy conditions,” created “a perform storm of circumstances that made [respondent] vulnerable to making a mistake.”¹³⁵ The law judge noted that respondent consistently referenced his exhaustion as one of the reasons for his mistake in calculating the correct number of hours, and that respondent’s exhaustion was corroborated by Mr. Falco-Sonnenberg and Mr. Brazinski.¹³⁶ The law judge found that respondent’s failure to verify the change and to round down the hours could be reasonably explained by his exhaustion.¹³⁷

The law judge further indicated that Inspector Lewis erred when he ignored the defense of exhaustion as irrelevant and chose not to investigate it.¹³⁸ The law judge noted that DPE

¹³⁰ *Id.* at 287.

¹³¹ *Id.* at 288.

¹³² *Id.* at 287-288.

¹³³ *Id.* at 294-295.

¹³⁴ *Id.* at 295.

¹³⁵ *Id.* at 297-298.

¹³⁶ *Id.* at 295-296, 299.

¹³⁷ *Id.* at 300, 304-305.

¹³⁸ *Id.* at 297, 300.

McGill's report impressed on Inspector Lewis that respondent's explanation "did not add up," suggesting that Inspector Lewis had made up his mind about respondent's culpability before even speaking to respondent.¹³⁹

The law judge indicated that there was no urgency to making up the hours since Mr. Falco-Sonnenberg had ample time to perform any necessary solo cross-country flights before the check ride.¹⁴⁰ The law judge also indicated that had respondent intentionally falsified the change, he would have made the change less conspicuous and changed the airplane number.¹⁴¹ The law judge noted that respondent had nothing to gain by the falsification.¹⁴² The law judge concluded that respondent lacked the requisite intent to falsify the logbook on July 18 because he reasonably believed his change was proper and accurate.¹⁴³

D. Issues on Appeal

The Administrator argues that the law judge's finding that respondent was credible is arbitrary, capricious, and not based on the evidence.¹⁴⁴ The Administrator further argues that the law judge's determination that respondent did not make intentionally false statements when he changed the July 18 entry and attested to Mr. Falco-Sonnenberg's readiness for the check ride is contrary to the willful disregard doctrine.¹⁴⁵ The Administrator also argues that respondent's conduct warrants a sanction of revocation.¹⁴⁶

¹³⁹ *Id.* at 301.

¹⁴⁰ *Id.* at 302-303.

¹⁴¹ *Id.* at 302-303.

¹⁴² *Id.* at 303.

¹⁴³ *Id.* at 306-307.

¹⁴⁴ Appeal Br. at 17-21.

¹⁴⁵ *Id.* at 21-26.

¹⁴⁶ *Id.* at 26-29.

II. Decision

On appeal, we review the law judge's decision *de novo*.¹⁴⁷ 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 the fact.¹⁴⁸ There is no dispute on appeal concerning the law judge's finding that respondent's change of the July 18 logbook entry and his attestation constituted false representations in reference to a material fact.¹⁴⁹ As such, whether respondent's actions meet the first two elements of the *Hart v. McLucas* test is not before us.

A. Credibility Determinations

The Administrator argues that respondent's actions meet the third element of the *Hart v. McLucas* test, and that the law judge erred in determining that respondent's actions were not intentional.¹⁵⁰ The third element of the *Hart v. McLucas* test requires respondent to have known the representations were false when he made them.¹⁵¹ Direct evidence of actual knowledge is not required to prove a case of intentional falsification, and the element of knowledge may be inferred from circumstantial evidence.¹⁵² The law judge's credibility findings are essential in

¹⁴⁷ *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).

¹⁴⁸ 535 F.2d 516, 519 (9th Cir. 1976).

¹⁴⁹ See Appeal Br., Reply Br.

¹⁵⁰ Appeal Br. at 17.

¹⁵¹ *Administrator v. Tushin*, NTSB Order No. 5902 at 49 (2021).

¹⁵² *Olsen v. NTSB*, 13 F.3rd 471, 475 (9th Cir. 1994); *Erickson v. NTSB*, 758 F.2d 285, 288 (8th Cir. 1985).

intentional falsification cases¹⁵³ and must be based explicitly on factual findings in the record.¹⁵⁴ We will not overturn a law judge's credibility determination unless a party can establish the determination was arbitrary and capricious.¹⁵⁵

The Administrator argues that the law judge's determination that respondent was credible is arbitrary and capricious because respondent gave "conflicting and ever-evolving" explanations for the change in the July 18 entry, and because respondent's final version of events is improbable.¹⁵⁶ Specifically, the Administrator argues that respondent did not submit any evidence of the alleged text message from Mr. Falco-Sonnenberg; after Flight Schedule Pro showed expected hours of 2.5, respondent could not explain to DPE McGill where 2.3 hours came from; and respondent did not mention the Hobbs meter to DPE McGill.¹⁵⁷ The Administrator further argues that the record does not support the defense of exhaustion: even if respondent was tired on September 8, the day he changed the July 18 entry, the record does not explain why respondent was tired when he made the attestation on September 9 or when he met with DPE McGill on September 10.¹⁵⁸

We disagree with the Administrator's arguments. At the hearing, respondent did not claim exhaustion on September 9 or September 10, but testified in detail to his exhaustion on September 8, the day he changed the logbook.¹⁵⁹ This testimony was corroborated at the hearing

¹⁵³ *Administrator v. Porco*, NTSB Order No. EA-5591 at 28-29 (2021); *Administrator v. Singleton*, NTSB Order No. EA-5529 (2010) (stating a law judge must make credibility determinations in intentional falsification cases).

¹⁵⁴ *See Dillmon v. NTSB*, 588 F.3d 1085, 1094 (D.C. Cir. 2009); *Administrator v. Reynolds*, NTSB Order No. EA-5641 at 8 (2012).

¹⁵⁵ *Porco*, NTSB Order No. EA-5591 at 20-21.

¹⁵⁶ Appeal Br. at 17-21.

¹⁵⁷ *Id.* at 18-19.

¹⁵⁸ *Id.* at 19.

¹⁵⁹ *See* Exh. A-5; Tr. at 160-162, 172-173.

by Mr. Falco-Sonnenberg and Mr. Brazinski and is consistent with the written statements of Mr. Falco-Sonnenberg and respondent.¹⁶⁰ In addition, respondent explained at the hearing that he forgot to mention the Hobbs meter to DPE McGill due to nervousness.¹⁶¹ In determining respondent credible, the law judge provided an in-depth discussion of testimonies and the evidence and thoroughly explained her rationale for her determination.¹⁶² The law judge did not merely recite conclusions without supporting rationale, and her rationale does not contradict the available evidence. Thus, the law judge's credibility determination is not arbitrary or capricious.

As we have previously explained, our law judges are best positioned to consider the witnesses' demeanor and conduct during live testimony and evaluate their credibility because they see and hear the witnesses.¹⁶³ We may not reverse the law judge's credibility determination even if other evidence in the record could have been given greater weight¹⁶⁴ or simply because, on the appellate record, we might come to a different conclusion.¹⁶⁵ While the arguments proffered by the Administrator could support a finding that respondent intentionally falsified the change of the July 18 entry, such a finding is not required on this record. The law judge's acceptance of respondent's explanation for the change of the entry is not against the overwhelming weight of the evidence, and respondent's explanations of the events surrounding

¹⁶⁰ See Exhs. A-2, A-5; Tr. at 36-37, 182-184.

¹⁶¹ Tr. at 169, 174.

¹⁶² See October 5, 2022, Oral Initial Decision at 287-288, 297-305.

¹⁶³ See *Administrator v. Taylor*, NTSB Order No. EA-4509, 1996 WL 738720 at 3 (1996); *Administrator v. Kalpin*, NTSB Order No. 5899 at 21 (2021); *Administrator v. Antonellis*, NTSB Order No. EA-5896 at 12 (2021).

¹⁶⁴ *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).

¹⁶⁵ *Administrator v. Roarty*, NTSB Order No. EA-5261 at 6 (2006) (citing *Chirino v. NTSB*, 849 F.2d 1525, 1530 (D.C. Cir. 1988)).

the change are not so far-fetched as to be inherently incredible. Because the law judge's credibility finding is well-reasoned and rooted in facts, we find no basis to overturn it.¹⁶⁶

B. Application of Willful Disregard Doctrine

The Administrator argues that we must find respondent culpable under the willful disregard doctrine, even if the law judge's credibility finding is supported by the evidence.¹⁶⁷

The Administrator contends that under this doctrine, the Administrator need not show respondent had actual knowledge of falsity or an intent to deceive, but rather that respondent intentionally chose not to verify the hours.¹⁶⁸ The Administrator argues that the application of the willful disregard doctrine is appropriate under *Administrator v. Boardman*,¹⁶⁹ *Administrator v. Cooper*,¹⁷⁰ and *Administrator v. Taylor*,¹⁷¹ where respondents admitted they did not read the questions on medical certificate applications before answering them. In these cases, we held that a knowing failure to read the questions on the application amounted to intent to falsify.¹⁷²

We do not find the present case to be analogous to *Boardman*, *Cooper*, and *Taylor*.

Respondent here did not argue that he failed to read the logbook entry. Instead, he asserted that at the time he changed the entry, he firmly believed that Mr. Falco-Sonnenberg flew in a

¹⁶⁶ The Administrator argues that the law judge erred in commenting about Inspector Lewis's handling of the investigation in the present case. Appeal Br. at 13, fn. 3. We agree with the Administrator that our precedent highlights the absence of our adjudicative authority over the quality of the FAA's investigations. See *Administrator v. Boyle*, NTSB Order No. EA-3262 (1991); *Administrator v. Arizona Avionics, LLC*, NTSB Order No. EA-4681 (2000). However, we do not find the law judge's commentary to be a reversible error since the law judge relied on evidence independent of Inspector Lewis's actions to conclude respondent did not intentionally falsify the logbook. See October 5, 2022, Oral Initial Decision at 294-300, 302-303.

¹⁶⁷ Appeal Br. at 21-26.

¹⁶⁸ Appeal Br. at 21.

¹⁶⁹ NTSB Order No. EA-4515 (1996).

¹⁷⁰ NTSB Order No. EA-5538 (2010), *aff'd Cooper v. NTSB*, 660 F.3d 476 (D.C. Cir. 2011).

¹⁷¹ NTSB Order No. EA-5611 (2012).

¹⁷² See *Boardman*, NTSB Order No. EA-4515 at 3-5; *Cooper*, NTSB Order No. EA-5538 at 10-11; *Taylor*, NTSB Order No. EA-5611 at 5-8.

different aircraft from the one indicated in the logbook, which affected the flight hours.¹⁷³ There was no question at any point during the course of this case about respondent not reading the information in the logbook. The only issue has been whether respondent, upon reading the logbook and changing the entry, exhibited an intent to falsify. Even if this case was similar enough to compare to *Boardman*, *Cooper*, and *Taylor*, it still requires an inquiry into respondent's state of mind since "the willful disregard standard functions as a subset of the intentional falsification standard."¹⁷⁴ Where there is a question of willful disregard, the law judges must make a credibility determination whether a respondent's state of mind at the time of the conduct was tantamount to purposeful ignorance.¹⁷⁵ Here, the law judge determined credible respondent's assertion that he believed his change of the July 18 entry was proper and accurate at the time he made it.¹⁷⁶ For the reasons discussed above, we do not find the law judge's credibility in this regard arbitrary and capricious. Thus, we affirm the law judge's finding that the Administrator did not prove the third element of the *Hart v. McLucas* standard, and the conclusion that respondent did not make an intentionally false statement when he changed the July 18 entry or attested to Mr. Falco-Sonnenberg's readiness for the check ride. Because we find no violation of 14 C.F.R. § 64.59(a)(1) and 14 C.F.R. § 61.59(a)(2), we do not need to consider the Administrator's arguments on sanction.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied;
2. The law judge's oral initial decision is affirmed; and

¹⁷³ See Tr. at 156, 160-161, 170; Exhs. A-5, A-6.

¹⁷⁴ *Administrator v. Reynolds*, NTSB Order No. EA-5641 at 11 (2012).

¹⁷⁵ See *id.*

¹⁷⁶ See October 5, 2022, Oral Initial Decision at 287-288, 302-307.

3. The Administrator's revocation of respondent's commercial pilot and flight instructor certificates is reversed.

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

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

* * * * *

In the matter of: *

BILLY NOLEN, *

ACTING ADMINISTRATOR, *

FEDERAL AVIATION ADMINISTRATION, *

Complainant, *

v. *

ETHAN J. HOBBS, *

Respondent. *

* * * * *

Docket No.: SE-31083
JUDGE TAPIA

via Zoom videoconference

Wednesday,
October 5, 2022

The above-entitled matter came on for hearing,
pursuant to notice at 11:00 a.m. Central.

BEFORE: ALISA M. TAPIA
Administrative Law Judge

APPEARANCES:

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ORAL INITIAL DECISION AND ORDER

1
2 JUDGE TAPIA: This proceeding is authorized under 49 USC
3 Section 44709 and the Rules of Practice in Air Safety Proceedings
4 of the National Safety Transportation Board and as required by the
5 Board's rules.

6 By the authority vested in me as the Administrative Law
7 Judge, I am issuing an Oral Initial Decision in Docket No. SE-
8 31083.

9 Pursuant to due notice, a hearing was held in this matter on
10 May 24th and 27th, 2022, via Zoom conference.

11 Benjamin Crumm and Co-Counsel Brian Khan represented the
12 Acting Administrator Billy Nolen at the Federal Aviation
13 Administration Office of Chief Counsel, Enforcement Division,
14 hereinafter referred to as the FAA. Jarad Schneider represented
15 Respondent Ethan Hobbs.

16 The parties were afforded an efficient, orderly, and fair
17 hearing; that is, a full opportunity to offer evidence, call and
18 examine witnesses, and present arguments to support their
19 respective positions. Mr. Hobbs was in attendance throughout the
20 virtual hearing.

21 I will not discuss all the evidence in detail. I have,
22 however, considered all the evidence both oral and documentary. I
23 view that that I do not specifically mention as being cumulative
24 or not materially affecting the outcome of this case.

25 I note for the record that on September 23rd, 2022, I

1 informed the parties that the partial determination given on June
2 1st, 2022, was void. The oral initial decision and order that I
3 would render today overrides it. My oral decision -- initial
4 decision today is based on the official hearing transcripts,
5 credibility determinations, and closing arguments made at the
6 hearing on May 24th and 27th, 2022, and the parties sanction
7 briefs submitted on June 15th and 29th, 2022.

8 On March 17th, 2022, Respondent Ethan Hobbs initiated this
9 docket upon his appeal of the FAA's emergency order of revocation
10 dated March 9th, 2022.

11 Under the Board rules, the FAA filed a copy of that order as
12 the Complaint on March 18th, 2022. In that Complaint the FAA
13 ordered the emergency revocation of Respondent's Commercial Pilot
14 Certificate, Flight Instructor Certificate Nos. 3874181, and any
15 other unexpired airman medical certificates based on the violation
16 of the Federal Aviation Regulations codified at 14 FRC Part 61.

17 In the Complaint the FAA contends that on September 8th,
18 2021, Respondent intentionally falsified an entry in Student
19 Falco-Sonnenberg's logbook. The FAA contends that Respondent knew
20 that Student Sonnenberg was taking the practice test on September
21 10th, 2021, and needed additional hours to take the test, thus
22 altering Student Sonnenberg's logbook to reflect that he had the
23 extra hours of experience that he lacked.

24 As a result of Respondent's actions, the FAA contends that
25 Student Sonnenberg attempted to take the test by providing false

1 information to the FAA. In addition the FAA alleges that
2 Respondent attested in Student Sonnenberg's FAA Form 8710-1 that
3 he "personally instructed the Applicant and considered this person
4 ready to take the test" when Respondent knew that Student
5 Sonnenberg lacked the hours of experience to take the practical
6 test.

7 Based on the alleged violations, the FAA determined
8 Respondent lacks the qualifications necessary to hold an airman
9 medical certificate of any kind and that the public interests and
10 safety in air transportation required the immediate revocation of
11 Respondent's certificates.

12 On March 22nd, 2022, Respondent filed his Answer to the
13 Complaint. In that Answer Respondent admitted the allegations in
14 Paragraphs 1, 2, 4, 5, 7, 8, and 10. As the Respondent has
15 admitted the allegations, they are deemed to have been established
16 for this decision.

17 Respondent denies the allegations in Paragraphs 6 and 9.
18 Specifically Respondent denied that when he made the logbook
19 entry, he knew it was false because he knew the flight time was
20 1.7 hours. Respondent further denies that when he made the
21 attestation he knew it was false because he knew that Student
22 Sonnenberg did not have the required flight time to take the
23 practical test.

24 As to the allegations in Paragraph 3, Respondent contends he
25 has insufficient knowledge to admit or deny, thus he denies that

1 allegation. Specifically then on July 18th, 2021, Student
2 Sonnenberg made an entry in his logbook for a roundtrip solo
3 flight between Clow International Airport and Rockford
4 International Airport in Illinois.

5 In this decision I also considered the Respondent's
6 affirmative defenses. Respondent argues that he lacked the intent
7 to violate Federal Aviation Regulations as he reasonably believed
8 the information he entered on Student Sonnenberg's logbook was
9 proper and accurate.

10 Respondent also argues that he was unaware that the
11 information entered in Student Sonneberg's logbook was incorrect.

12 On the first day of hearing the parties agreed that the issue
13 before me is whether the FAA properly followed Federal Aviation
14 Regulations when it revoked Respondent's commercial pilot and
15 flight instructor certificates.

16 To determine this issue, the parties agreed that I must
17 resolve the following questions:

18 One, did the FAA correctly determine that Respondent Hobbs
19 made an intentionally false entry in a logbook that is required to
20 show compliance with any requirement for the issuance or the
21 exercise of the privileges of any certificate rating or
22 authorization in violation of Section 61.59(a)(1) and (a)(2)?

23 If so, did the FAA correctly determine that Respondent's
24 violation of Section 61.59(a) were grounds for revocation of any
25 airman certificate pursuant to Order No. 2150.3C?

1 At the hearing the FAA Exhibit A-1 was admitted into evidence
2 over objection. Exhibits A-2, A-3 and through -- A-5 through A-9
3 were admitted without objection.

4 Respondent's Exhibits R-1 through R-3 were admitted into
5 evidence without objection.

6 The FAA calls its first witness, Alexander Falco-Sonnenberg.

7 Student Sonnenberg lives in Elmhurst, Illinois, and holds a
8 private pilot certificate. He is currently a sophomore at Lewis
9 University pursuing a degree in aviation flight technology.

10 Student Sonnenberg testified that Respondent Hobbs was his
11 flight instruction at JWA Aviation Flight School, or JWA, located
12 the at Clow International Airport. On September 10th, 2021, he
13 was scheduled to take his private practical exam, known as
14 checkride, to qualify for his private flight certificate.

15 On test day Student Sonnenberg testified that the designated
16 pilot examiner assigned to administer the exam was Keith McGill.
17 He presented Examiner Keith McGill his logbook and Integrated
18 Airman Certification, or IACRA, among other documents. On the
19 IACRA an applicant must total all hours in different categories to
20 confirm that an aviation student is ready to take the checkride.
21 He testified that Respondent Hobbs assisted him in submitting his
22 IACRA application online.

23 Upon reviewing the logbooks, Student Sonnenberg testified
24 that Examiner McGill questioned him on a Wite-out entry on July
25 18th, 2021. The entry showed a solo cross-country flight of 2.3

1 hours on an aircraft with a tail number of N8618echo. After
2 Student Sonnenberg told him it was an error without further
3 explanation, Examiner McGill looked up the aircraft invoice,
4 decided not to administer the exam and waited for Respondent Hobbs
5 to return from a flight. Once Respondent Hobbs arrived, he
6 apologized for the confusion and began to examine the logbook.

7 Student Sonnenberg identified Exhibit A-1 as his logbook. He
8 explained the logbook keeps track of dates, flight hours, aircraft
9 identification, and destination points, among other information.
10 He testified that the remarks column explains what occurred during
11 that flight and the flight instructor's signature.

12 Student Sonnenberg explained a flight on July 9th, 2021. He
13 testified that he was required to fly a solo flight to a towered
14 airport to complete four hours of takeoffs and landings. He flew
15 the first flight with Respondent Hobbs for one lap in the traffic
16 pattern at Clow International Airport because it was a plane he
17 was uncomfortable flying solo.

18 He testified that the Cherokee aircraft with Tail No.
19 N3333whiskey was older and different than the Cherokee aircraft
20 that he had flown three or four times with Tail No. N8618E, that
21 that aircraft was unavailable. The Cherokee had a hand brake
22 instead of a toe brake and a tach meter instead of a Hobb's meter,
23 a device to measure the time an aircraft was in use. A tach meter
24 requires the pilot to calculate flight hours by multiplying the
25 tach time by 1.3. He explained that he did not enter the flight

1 information because it may have been too short to warrant an entry
2 on his logbook.

3 Student Sonnenberg testified that Respondent Hobbs reviewed
4 his logbook late one evening leading up to the checkride. On
5 September 9th, 2021, Student Sonnenberg testified they met with
6 Respondent Hobbs at JWA to assist him with his IACRA application.
7 In reference to this logbook, Student Sonnenberg testified that he
8 exceeded minimum required hours in most categories. He believed
9 all his required hours to qualify for the exam had been met. Upon
10 review, Respondent Hobbs discovered he was short five cross-
11 country hours.

12 Student Sonnenberg explained that Respondent Hobbs believed
13 the July 18th, 2021, hours were incorrect. He may have forgotten
14 to use tach time and only recorded the Hobbs calculation because
15 it was shorter than the rest of the flights in his logbook.
16 Student Sonnenberg testified that he had no experience with the
17 Hobbs system calculations and, although he did not completely
18 understand it, he did not think anything was wrong.

19 He recalled Respondent Hobbs looking at his iPad, phone, and
20 computer for various reasons. He believed Respondent Hobbs
21 calculated the 2.3 hours by multiplying the time by 1.3. After
22 Respondent Hobbs completed the calculations, Student Sonnenberg
23 used White-Out corrective tape to change the logbook entry from
24 1.7 to 2.3 hours. After the correction, they believed he met the
25 required hours to take the checkride. Student Sonnenberg also

1 testified that not changing the aircraft tail number was an
2 oversight and that it was never discussed.

3 In October 2021 Student Sonnenberg testified that Examiner
4 McGill requested a statement for FAA Air Safety Inspector Doug
5 Lewis. He identified Exhibit A-2 as his e-mail to Inspector Lewis
6 that summarizes his recollection of a logbook entry change.

7 On cross-examination Student Sonnenberg testified that they
8 were not looking to alter hours but rather reviewing some missing
9 information. When they discovered he lacked the required solo
10 cross-country hours, they looked back to older flights and found
11 that the 1.7 hour flight seemed shorter than the other flights.

12 Student Sonnenberg testified when Respondent Hobbs reviewed
13 his logbook, he appeared exhausted. He knew that Respondent Hobbs
14 had been flying long distances multiple times that week and that
15 he was working an unusual number of hours leading up to reviewing
16 his logbook. He also recalled Respondent Hobbs telling him that
17 he was exhausted.

18 After he was directed to his October 2021 e-mail, Student
19 Sonnenberg confirmed that he told Inspector Lewis that Respondent
20 Hobbs multiplied the time by 1.3 and mistakenly rounded up, which
21 he believed was due to exhaustion.

22 Student Sonnenberg also testified had he known he was short
23 hours, he would have had enough time and good weather before his
24 checkride to make up solo flight hours the day before the
25 checkride. He testified there was no urgency to make up hours

1 because they believed he had met the requirements.

2 The FAA next called Designated Pilot Examiner Keith McGill.
3 Examiner McGill is employed at Lewis University and has been there
4 for the last 27 years. He's an associate professor and chief
5 pilot and runs the flight training program. He has an
6 undergraduate degree from the university in aviation
7 administration. He holds an Airline Transport Pilot Certificate
8 and a Remote Pilot Certificate.

9 For the FAA Examiner McGill is an authorized designated pilot
10 examiner. His duties include administering private practice exams
11 for student pilots seeking certification. He's administered over
12 300 exams on behalf of the FAA.

13 On September 10th, 2021, Examiner McGill testified that
14 Student Sonnenberg was scheduled to take his checkride. He
15 testified that completing that exam allows an applicant to fly an
16 aircraft as a private pilot in good weather and carry passengers,
17 along with other privileges and responsibilities that the FAA
18 grants.

19 On exam day, Examiner McGill testified that he met with
20 Student Sonnenberg. After reviewing his medical certificates,
21 among other documents, he verified that his IACRA application was
22 submitted, flight hours were appropriately recorded in his
23 logbook, and a flight instructor recommendation was in place
24 showing that Student Sonnenberg met all the requirements to take
25 the exam. Respondent Hobbs had signed Student Sonneberg's

1 application.

2 Examiner McGill was asked to explain the solo flight hour
3 test requirements. He explained that a student pilot must have
4 logged at least ten hours of solo time. Five hours must be solo
5 cross-country, three takeoffs and landings at a towered control
6 field.

7 He testified that pilot logging of time usually is done to
8 the tenth of an hour, which is the equivalent of six minutes. He
9 explained that aircrafts typically have a Hobbs meter timing
10 system, which means when the aircraft begins running, the meter
11 starts to tick. When the aircraft shuts down, it stops.

12 Examiner McGill testified that upon reviewing Student
13 Sonnenberg's logbook, an entry correction came to his attention
14 that would be needed to qualify him for the five hours of solo
15 cross-country time. The entry had a Wite-out showing that
16 something had been changed. He testified that the common practice
17 is to put a single line through an entry to correct an error and
18 then initial it so that there is a record of what and who made the
19 change.

20 Examiner McGill testified that he asked Student Sonnenberg
21 why the entry was changed. He testified that it was important
22 because he had exactly five hours, the minimum requirement to
23 begin the exam. Student Sonnenberg stated it was to correct an
24 error but could not tell him the source of the 2.3 hour
25 correction. Examiner McGill learned that the change had been made

1 the night before on September 9th.

2 Using a light source, Examiner McGill testified that he could
3 see the previous entry of 1.7 hours. He also went to the dispatch
4 office to view the invoice which verified the 1.7 hours. He
5 determined that 1.7 hours was the appropriate entry for that
6 flight. He waited for Respondent Hobbs to return from a flight to
7 explain.

8 Examiner McGill testified that Respondent Hobbs explained
9 that he believed the flight seemed longer than 1.7 hours.
10 Examiner McGill testified that it was a solo flight. He could not
11 understand how the instructor could know whether a flight seemed
12 short or long. Second, the flight occurred in July, so it was
13 unclear to him how the instructor's recollection of the flight
14 would come to light two months later.

15 He asked Respondent Hobbs how he calculated the 2.3 hours.
16 In response Respondent Hobbs stated that he may have accidentally
17 looked at the inspected time in Flight Schedule Pro, a software
18 program for scheduled flights.

19 Examiner McGill testified that they reviewed the expected
20 time and flight in the Schedule Pro and saw that it stated 2.5
21 hours, not 2.3 hours. At that time Examiner McGill decided that
22 he would not perform the exam and allow Student Sonnenberg to do
23 another cross-country later that day to satisfy the requirements.
24 The exam, however, was ultimately rescheduled for September 25th.

25 That day Examiner McGill testified that he sent Inspector

1 Lewis an e-mail outlining the events and attached a copy of the
2 logbook. He identified Exhibit A-3 as an e-mail sent to Inspector
3 Lewis.

4 On cross-examination Examiner McGill agreed that Student
5 Sonnenberg needed more than five hours to meet the flight
6 requirement and that the change of exactly five hours brought up
7 the issue.

8 He admitted that using Wite-out was not uncommon or unusual
9 to correct an error. He also admitted that the change was obvious
10 and that it was easy to ascertain that a change had been made.

11 He was then asked about the e-mail he sent to Inspector
12 Lewis. He confirmed that Respondent Hobbs had used the words
13 "expected time" and that Flight Schedule Pro does not use those
14 words.

15 Examiner McGill confirmed that he still does not know how the
16 hours were calculated. He also admitted that, had he received a
17 reasonable explanation for the error, he most likely would have
18 administered the exam but that his schedule did not permit it.

19 Lastly, Examiner McGill acknowledged that he had seen errors
20 made by applicants throughout the years. When asked whether he
21 had determined that Respondent Hobbs intended to deceive, Examiner
22 McGill testified that he had not come to that determination.

23 On redirect, Examiner McGill confirmed that the 2.3 hours did
24 not appear anywhere and that on July 18th, 2021, the same aircraft
25 indicated in the logbook was used.

1 The FAA called its last witness, Aviation Safety Inspector
2 Douglas Lewis. Inspector Lewis worked at the Flight Standards
3 District Office which maintains aviation safety in the Chicago
4 area. He's been employed with the FAA for the last five years.
5 Inspector Lewis' duties include overseeing air safety, designated
6 pilot examiners, and certificate holders of Parts 91 and 135
7 operators. He has a bachelor's degree in aviation from the
8 University of Dubuque. He holds an Airline Transport Flight
9 Certificate, Certified Flight Instructor Certificate with
10 instrument and multi-engine ratings. His experience includes 90
11 pilot deviations, 10 enforcements, and 14 current cases.

12 Inspector Lewis acknowledged Exhibits A-1 and A-3, the e-mail
13 he received from Examiner McGill apprising him of what had
14 transpired that morning on September 10, 2021.

15 Inspector Lewis testified that after reading the e-mail, his
16 impression was that Respondent Hobbs' story did not add up. He
17 testified he followed up with Examiner McGill to confirm the
18 accuracy of the details. He believed that the cross-country hours
19 were changed to qualify Student Sonnenberg for the checkride. He
20 testified that an investigation was warranted because certifying a
21 pilot for hours is taken seriously.

22 Inspector Lewis identified Exhibit A-7, his letter of
23 investigation, or the LOI, sent to Respondent Hobbs on September
24 28th, 2021. He testified that the LOI was to inform Respondent
25 Hobbs of the investigation and request records. He requested that

1 Respondent Hobbs and Student Sonnenberg provide statements to
2 explain why they changed the hours from 1.7 to 2.3.

3 Inspector Lewis acknowledged Exhibit A-2 and A-5, Student
4 Sonnenberg's e-mail response dated October 4th, 2021, and
5 Respondent Hobbs' e-mail dated October 10th, 2021. He testified
6 that Respondent Hobbs stated that he was confused between the
7 previous flight on an aircraft with Tail No. N3333W, a plane that
8 did not have a Hobbs meter and multiplied the time by 1.3.

9 He testified that Respondent Hobbs' response differed from
10 Examiner McGill's summation. In addition, his response only
11 raised more questions, such as why Respondent Hobbs did not
12 correct the airplane tail number to reflect the aircraft used. He
13 testified that whenever the story starts to change, that lends him
14 to believe that this was done for a reason.

15 In comparing both e-mails, Inspector Lewis testified that
16 Respondent Hobbs and Student Sonnenberg referenced the 1.3
17 multiplication calculation. However, Student Sonnenberg proposed
18 a third version of the story, including Respondent Hobbs seeing
19 the 1.7 hours in this flight software and then multiplying it by
20 1.3.

21 He then identified Exhibit A-6, a telephone conversation memo
22 with Respondent Hobbs on October 21st, 2021. Inspector Lewis
23 testified the Respondent Hobbs told him, aside from the confusion
24 between the two aircrafts, that the 1.7 entry was correct.

25 Inspector Lewis testified that although there was an already

1 justification to pursue forward, Respondent Hobbs' admission
2 reaffirmed it.

3 He testified that Student Sonnenberg would be issued a
4 warning letter. Based on the falsification, Respondent Hobbs'
5 certificates would be revoked. He explained that an honor system
6 in trusting pilots to be truthful is essential to air safety.

7 After reviewing all the documents received, Inspector Lewis
8 determined that Respondent Hobbs changed the hours to show that
9 Student Sonnenberg was qualified to take the checkride exam and
10 signed a recommendation on Form 8710-1. Inspector Lewis testified
11 that the most convincing evidence was Respondent Hobbs' various
12 stories to explain the change.

13 Inspector Lewis identified Exhibit A-9, Order 2150.3C. He
14 explained that the order is used to determine the appropriate
15 sanction, and for falsification, the revocation is applicable,
16 even a single act because it shows that the pilot lacks the
17 qualifications to shoulder a certificate. If a pilot cannot be
18 trusted, it would affect air safety, and the pilot should no
19 longer have such privileges.

20 On cross-examination Inspector Lewis testified that he had
21 been involved in approximately 110 investigations. He testified
22 that being an investigator is a primary and essential aspect of
23 his job. He gathers information to support the enforcement
24 investigative report which he forwards, if appropriate, to the
25 legal department with his recommendation. He affirmed that his

1 training included reporting facts accurately. Inspector Lewis
2 also confirmed that he authored Section B of the investigation
3 report in this case. He testified that the investigative report
4 was accurate, thorough, and included all the essential facts about
5 the July 18th, 2021, flight.

6 Counsel referred Inspector Lewis to Exhibit 7, the letter of
7 investigation. Inspector Lewis testified that he had authored
8 approximately 20 in the last five years on behalf of the FAA. In
9 the LOI Inspector Lewis conceded to some wording that was not
10 appropriate and that an incorrect template was used in error. He
11 also confirmed that although the letter indicates a list of
12 documents requested is attached, no list was provided.

13 Counsel referred Inspector Lewis to Exhibit A-5. Respondent
14 Hobbs' e-mail. Inspector Lewis confirmed that the -- in that e-
15 mail he understood what Respondent Hobbs was referring to when he
16 mentioned two Cherokee aircraft, one having a tachometer and the
17 other -- and that in the industry one multiplies the hours with
18 1.3 to determine the result closer to the Hobbs meter calculation.

19 Counsel referred Inspector Lewis to Exhibit A-6, a telephone
20 conversation memo with Respondent Hobbs dated October 21st, 2021.
21 He explained that the purpose of the phone call was to get
22 clarification. He confirmed that he reviewed the memo for the
23 accuracy of facts before transferring the information to the FAA
24 memo form. Upon questioning, Inspector Lewis admitted that the
25 unsigned telephone memo was not the final version that the FAA

1 relied on. He also admitted that several errors were made in that
2 telephone memo and on the statement of facts in the investigative
3 report. Inspector Lewis admitted that not all the information was
4 included in the investigative report but added he felt it was
5 unnecessary.

6 Inspector Lewis explained that he did not include the
7 documentation Respondent Hobbs send him after their October 21st
8 conversation. Respondent Hobbs' documentation showed that he and
9 Student Sonnenberg flew an aircraft without a Hobbs meter before
10 the July 18th, 2021, flight. He explained that the information
11 was not in the logbook, thus it would not have qualified Student
12 Sonnenberg for the checkride. It was also irrelevant; therefore,
13 he omitted it from the memo and the investigative report.

14 Upon questioning Inspector Lewis admitted that he was aware
15 that Respondent Hobbs was trying to explain how the mistake was
16 made based on one or more flights on the aircraft that did not
17 have a Hobbs meter. He also conceded it was not whether the
18 student pilot was qualified. It was whether Respondent Hobbs
19 potentially falsified a logbook entry and that Respondent Hobbs
20 was trying to explain how the mistake may have occurred. He also
21 admitted that Student Sonnenberg e-mailed him before October 21st,
22 2021, explaining that the error happened concerning the older
23 Cherokee without a Hobbs meter.

24 Upon questioning Inspector Lewis conceded that his job was to
25 include all evidence relevant to the case. He testified in

1 looking at it now, it would have been in his best interest to
2 include it in the Investigative Report, a document that the FAA
3 relied upon in this case. Inspector Lewis testified that the
4 changing stories of what occurred were suspicious but agreed that
5 sometimes people perceive things differently.

6 When asked what engine 1 tach timing means, Inspector Lewis
7 testified that it represents the engine's timing of an aircraft
8 without a Hobbs meter. He explained that typically every plane
9 has a tachometer to measure time. After receiving Respondent
10 Hobbs' e-mail attachment of the flight on July 9th, Inspector
11 Lewis admitted that he did not follow up with anyone inquiring
12 more in depth about that flight and aircraft without the Hobbs
13 meter.

14 Counsel referred Inspector Lewis to Exhibit A-2, Student
15 Sonnenberg's e-mail. Inspector Lewis explained that the most
16 significant issue was the 1.7 multiplied by the 1.3 and then
17 rounding up. He testified that although he believed Respondent
18 Hobbs was forthcoming, he also believed that his statements were
19 untruthful. In addition, Respondent Hobbs never explained why the
20 hours rounded up.

21 Counsel referred Inspector Lewis to Order 2150.3C. He
22 confirmed that his revocation recommendation came from Figure 9-5.
23 "Fraudulent or intentionally false statement" because he
24 determined that Respondent Hobbs intentionally falsified the
25 logbook entry. Inspector Lewis testified that the most significant

1 thing for him was that Respondent Hobbs and Student Sonnenberg
2 knew the numbers were not matching up and still proceeded forward
3 with the hours.

4 Upon questioning Inspector Lewis conceded that he did not
5 know whether Respondent Hobbs intended to deceive. He looked at
6 the circumstantial evidence surrounding the event to make that
7 determination. He testified that he believed that Respondent
8 Hobbs was trying to qualify a student who planned to take the exam
9 the next day.

10 Lastly, Counsel referred Inspector Lewis to Exhibit R-6, the
11 FAA Compliance Program. Inspector Lewis identified it as an order
12 and guidance program for corrective actions. Inspector Lewis
13 referred to Paragraph E stating, "The FAA recognizes that some
14 deviations arise from factors such as flawed procedures, simple
15 mistakes, lack of understanding, or diminished skills." Inspector
16 Lewis confirmed that mistakes occur and that it falls within
17 corrective actions.

18 On redirect FAA Counsel referred Inspector Lewis to Exhibit
19 A-6, the phone memorandum, A-7, the LOI, and R-1, the flight
20 information on July 9th, 2021.

21 First Inspector Lewis testified that although the phone
22 memorandum did not have his signature, it was the final version.

23 Second, he did not believe that July 9, 2021, flight and
24 invoice Respondent Hobbs sent to him was relevant.

25 Third, Inspector Lewis testified that errors in his LOI did

1 not affect his investigation or his conclusion.

2 As to the Compliance Program, Inspector Lewis testified that
3 falsification cases do not fall under simple mistakes. When asked
4 whether he wished to change his conclusion, Inspector Lewis
5 testified he did not.

6 On recross Inspector Lewis was referred to FAA's Compliance
7 Order. He agreed that whether the facts fall under a simple
8 mistake within the Compliance Order is his call; however,
9 Inspector Lewis testified that it does not fall under the
10 Compliance Order once determined that the act was intentionally.

11 Inspector Lewis disagreed when asked whether his job as an
12 investigator was only to collect information that supports his
13 determination. He testified that in hindsight we would have
14 included the information left out in the phone memorandum and the
15 investigative report.

16 At the end of Inspector Lewis' testimony, the FAA rested its
17 case.

18 In response to the FAA's case, Respondent Ethan Hobbs
19 testified on his own behalf.

20 Respondent Hobbs testified he has had a love for aviation
21 since childhood. His father was a glider, private, and commercial
22 pilot. His family lived across the airport and sometimes he would
23 sit in his glider waiting for the day he could fly airplanes.
24 Respondent Hobbs testified that he attended OSHKOSH every year for
25 the opportunity to talk to pilots.

1 He testified that after taking a tour at Flight Safety
2 International, a flight academy in Florida, he became committed
3 and enrolled in January of 2018. In April 2018 he received his
4 private pilot certificate. By 2019 his ratings included single-
5 engine, multi-engine, multi- instrument, and commercial ratings.

6 In December 2019 Respondent Hobbs received his Certified
7 Flight Instructor, or CFI, training at Aurora Airport in Sugar
8 Grove, Illinois. He testified he has never received FAA warnings,
9 aircraft accidents, or administrative actions.

10 Respondent Hobbs testified that he remains employed at JWA
11 assisting the maintenance department. He plans to pursue an
12 Aviation Maintenance Professional. However, he hopes to get back
13 to mentoring students as a CFI.

14 As a CFI, Respondent Hobbs testified he has flown with
15 students approximately 20 to 25 times. Student Sonnenberg was one
16 of this students, a student on a scholarship. He testified he has
17 flown with Student Sonnenberg around 13 times.

18 He testified that Wayne Brazinski is a supervisor at JWA.
19 JWA has ten-plus aircrafts used for student instruction.
20 Approximately four or six Cessna 152 and 172s and two Piper
21 Cherokees.

22 Respondent Hobbs explained the differences between the two
23 Cherokees. The aircraft with a Tail No. N8618E has a Hobbs meter.
24 And the other, older Cherokee with a Tail No. N3333W does not.
25 The older aircraft also has older avionics, a push-to-start button

1 and a hand brake instead of a toe brake. Respondent Hobbs
2 explained that students find that aircraft challenging to fly. It
3 has a tachometer used to measure the operating speeds of an engine
4 that tracks the revolutions per minute, or RPMs, of the aircraft
5 engine.

6 On July 9th, 2021, Respondent Hobbs testified that he flew
7 with Student Sonnenberg on the aircraft N3333W in preparation for
8 Student Sonnenberg's cross-country flight on July 18th, 2021.

9 Respondent Hobbs identified Exhibit R-3 as his dual flight
10 training reservation and invoice on Flight Schedule Pro. He
11 explained that JWA uses it primarily to keep records for student
12 logbooks. The record shows the date and duration of a flight on
13 July 9th, 2021. He testified that on that day N3333W was flown
14 from 12 to 1 p.m. The meter was an engine 1 tach time, which
15 means the aircraft did not have a Hobbs meter. He explained that
16 tach out time would have been 742.42 hours and in time 742.59
17 hours which would have been .17. A Hobbs meter would have shown
18 .2 hours.

19 Respondent Hobbs explained the difference between the Hobbs
20 meter and a tachometer. He explained that a Hobbs meter runs when
21 the engine is started with a master switch and stops when the
22 engine shuts down. On the other hand, tach meter measures engine
23 revolutions. He explained it runs off an impeller in the engine
24 and drives off the pressure of the oil. As the RPMs increase, the
25 impeller in the engine speeds up the tach time. Respondent Hobbs

1 testified that most flights are not full tach time. A well-known
2 aviation technique calculation at JWA is multiplying 1.3 times
3 tach time which calculates the actual Hobbs time.

4 Respondent Hobbs identified Exhibit R-2, a screenshot of his
5 ForeFlight logbook. He explained that it's a logbook where he
6 maintains personal and student flight information and shows a
7 flight he took with Student Sonnenberg with aircraft N3333W and
8 takeoffs and landing information. The total time was .2. They
9 use 1.2 -- I'm sorry. They use 1.3 times the .17.

10 Respondent Hobbs testified that the fatigue caused him to
11 make an innocent mistake. On September 26, 2021, he testified he
12 had flown with one student. Upon landing Supervisor Brudzinski
13 told him that an inspector had flown a JWA airplane destined for
14 Mackinaw Island. As the instructor was approaching to land, the
15 aircraft lost engine power. With barely any power, the airplane
16 was stranded on the island.

17 He testified that he volunteered to fly a mechanic to
18 Mackinaw Island. He left Clow Airport and drove to Joliet Airport
19 to borrow a friend's Cessna 182. He filled the airplane with fuel
20 and then flew the Cessna back to Clow Airport to pick up the
21 mechanic and load the plane with tools. Then they flew the three
22 and-a-half hours to the island. He described the weather as
23 turbulent. He testified it was windy, cold, and raining.

24 Before working on the plane, they had to tie it down and
25 diagnose the engine problem. They discovered that it was only

1 producing 1900 to 2,000 RPMs. Respondent Hobbs testified that
2 they began working on the engine by removing the cowling and
3 performing compression checks on the cylinders. They pulled out
4 the cylinder and discovered that the exhaust valve was stuck open.
5 Without a new cylinder, nothing at that point could be done. He
6 estimated they spent approximately four to five hours working on
7 the engine. They then put everything back together and secured --
8 securely tied the plane down before making the three and-a-half
9 hour trip back to Clow Airport. Respondent Hobbs testified that
10 before he headed home, he had to refuel the aircraft and fly it
11 back to Joliet Airport. By that time it was past 10 p.m.

12 The next day, Tuesday, September 7, 2021, Respondent Hobbs
13 testified that he had to work eight to nine hours at his second
14 job at Troy Township in Shorewood, Illinois. That evening
15 Supervisor Brazinski advised him that a cylinder, among other
16 parts had been purchased, and that two mechanics would have to be
17 flown back to the island.

18 In the early hours of Wednesday, September 28th, 2021,
19 Respondent Hobbs testified that he drove to Joliet Airport to
20 conduct his preflight. After completing his preflight he closed
21 the hangar and flew to Clow Airport at 6:45 a.m. to pick up the
22 mechanics, load the aircraft with parts and tools, and refueled
23 the plane before flying back to Mackinaw Island. He testified
24 that the flight took longer than three and-a-half hours due to
25 rain and headwinds. He testified that he flew IMC, or instrument

1 meteorological conditions, to the island which means flying in the
2 clouds and relying on his instruments.

3 Upon landing they unloaded the aircraft and removed the
4 cowling and engine from the plane. All done under rainy
5 conditions. He helped two mechanics remove the cylinders. The
6 whole process took hours before they could conduct another run-up.
7 Although the RPMs were higher, it was still not at 2700 to fly
8 safely to the mainland. After several tests of the ignition
9 system, Respondent Hobbs testified that the engine started to
10 shudder because it was still not getting enough power to fly
11 safely. So one of the mechanics had to fly that plane across to
12 Mackinaw City for additional maintenance as he followed in the
13 Cessna aircraft. Once there they tied down the plane for
14 maintenance, and he flew the mechanics three and-a-half hour back
15 to Clow Airport under IMC conditions.

16 Once at Clow Airport, he assisted in unloading parts and
17 tools and left the airplane at Clow Airport to meet with Student
18 Sonnenberg who was waiting for him to review his logbook. Upon
19 reviewing the logbook, the July 18, 2021, flight stood out to him.
20 To them. He testified that he knew Student Sonnenberg had flown
21 N3333W that day. After confirming with Student Sonnenberg that he
22 not multiplied the time by the 1.3 equation to get the Hobbs time,
23 he made the calculation and changed the entry in the logbook. And
24 at that time Respondent Hobbs testified that he did not realize
25 how exhausted he was from the week's events.

1 On September 30th, 2021, Respondent Hobbs testified that he
2 received the LOI, the letter of investigation. In response he
3 sent Inspector Lewis the documents requested and a statement.

4 He referred -- he was referred to Exhibit A-5, his e-mail to
5 Inspector Lewis. Respondent Hobbs testified that he explained why
6 the July 18th, 2021, flight stood out to him. He informed
7 Inspector Lewis about the Cherokee N3333W that did not have a
8 Hobbs meter and that the J -- and that the JWA procedure evaluates
9 the time by multiplying it by 1.3. He explained that when they
10 reviewed the flight time for the checkride, he thought Student
11 Sonnenberg had the wrong end number and multiplied the 1.7 value
12 by 1.3. He also tried to explain how extremely exhausted he was
13 and that he should have waited until the next day to review the
14 logbook.

15 Respondent Hobbs testified that he was wrong, and the 1.7 was
16 the correct number for the checkride and Student Sonnenberg was
17 short of the time required. He testified, however, he -- that he
18 had tried to convey how the mistake occurred.

19 At the hearing Respondent Hobbs testified there were several
20 reasons why he thought the hours were low on that day. He
21 recalled that Student Sonnenberg had texted him when he landed.
22 The flight for Rockford usually is longer than 1.7 and also that
23 Cherokees were slower flying airplanes. Typically it was a longer
24 flight.

25 Respondent Hobbs testified that there was no urgency to

1 review Student Sonnenberg's logbook and that Student Sonnenberg
2 were meeting the next day to fly. He admitted he made crucial
3 errors and attempted to explain to Inspector Lewis that he should
4 have cross-referenced to determine his accuracy that evening but
5 was exhausted. What seemed like an obvious answer in front of him
6 made him comfortable in making the change.

7 When asked if multiplying 1.7 times 1.3 equals 2.3,
8 Respondent Hobbs confirmed that it does not. It added up to 2.21.
9 He got the number wrong by rounding up instead of down. And again
10 Respondent Hobbs testified that he believed that fatigue was a
11 contributing factor.

12 Respondent Hobbs identified Exhibit A-6, inspector Lewis's
13 memo of their phone conversation on October 21st, 2021.
14 Respondent Hobbs testified that he told Inspector Lewis that he
15 would be e-mailing him an invoice showing that he and Student
16 Sonnenberg had flown an N3333W which would help explain how he
17 could make such a mistake. He told Inspector Lewis that he would
18 never intentionally falsify a student's logbook.

19 At the hearing Respondent Hobbs testified that when entering
20 time in a student's logbook, he knows that a designated pilot
21 examiner will scrutinize every entry. Respondent Hobbs identified
22 Exhibit R-1, the invoice of his flight on the aircraft N3333W with
23 no Hobbs meter sent to Inspector Lewis.

24 Respondent Hobbs then identified Exhibit A-3, Examiner
25 McGill's e-mail to Inspector Lewis. In that statement Examiner

1 McGill stated that he, Respondent Hobbs, told him that the change
2 was made the night before the checkride. Respondent Hobbs
3 confirmed that he did tell Examiner McGill it was made the day
4 before. However, the change was made on September 8th, 2021, two
5 days before the checkride.

6 Respondent Hobbs explained that he failed to inform Examiner
7 McGill about the mistake due to his nervousness. He knew that he
8 signed Student Sonnenberg to fly N3333W but was unaware that
9 another instructor had changed the aircraft. Respondent Hobbs
10 testified that he believed his entry was accurate.

11 The next day after speaking with Examiner McGill on September
12 11, 2021, Respondent Hobbs testified that he talked to the JWA
13 owners and tried to figure out what happened together. It was
14 serious to him and JWA because if a student is not allowed to take
15 their checkride because of an instructor's mistake, JWA takes
16 issue.

17 On cross-examination Respondent Hobbs admitted that he did
18 not fly with Student Sonnenberg when the logbook was altered or
19 when Student Sonnenberg completed his solo cross-country flight on
20 July 18th, 2021.

21 Respondent Hobbs confirmed that tach time 1.7 multiplied by
22 1.3 equates to 2.1 and that using 2.3 hours equaled to 5 hours
23 needed for Student Sonnenberg to qualify for the checkride.
24 Respondent Hobbs also confirmed that he did not cross-check the
25 flight invoice to verify the change. Respondent Hobbs then

1 reiterated that he believed exhaustion was a factor.

2 Respondent concluded its case in chief by calling Supervisor
3 Wayne Brazinski.

4 Supervisor Brazinski is the president of JWA aviation flying
5 school at Clow International Airport. JWA also has a maintenance
6 facility and operates as a fixed based operator. JWA is also
7 Respondent Hobbs' employer.

8 Supervisor Brazinski is a flight pilot with tailwheel
9 endorsement. His duties as president include all strategic, day-
10 to-day operations, hiring and supervising CFIs, and allocated
11 students to instructors, among other responsibilities. He
12 testified that his certified flight instructors are responsible
13 for teaching students to fly and other assignments at the flight
14 school.

15 Supervisor Brazinski confirmed that JWA has two Piper
16 Cherokees with the tail number N3333W and N8618E among other
17 aircrafts. Both aircrafts are the same model but have different
18 years, avionics, and braking system. The older model also has a
19 tach meter and the other a Hobbs meter.

20 Supervisor Brazinski identified exhibit R-3, a flight
21 scheduled from Flight Schedule Pro. He testified that JWA uses a
22 program to maintain records and run the business. He confirmed
23 that the record shows that a flight took place on July 9th 2021,
24 flight time total 0.17 hours with a Piper Cherokee aircraft with a
25 tail number N3333W. He testified that Respondent Hobbs and

1 Student Sonnenberg flew in that aircraft.

2 When asked what occurred the week of September 6th, 2021,
3 Supervisor Brazinski testified that one of his aircrafts was
4 stranded on Mackinaw Island. Respondent Hobbs flew the mechanics
5 to the island to evaluate the stranded airplane. He estimated
6 flight time is approximately three and-a-half hours. He testified
7 that they spent most of the time attending to the aircraft.

8 From September 8th through September 9th, Supervisor
9 Brazinski testified that Respondent Hobbs made another flight to
10 the island to remediate the issue. He confirmed that the weather
11 was adverse for flying. He explained that Mackinaw Island is also
12 a primitive airport so Respondent Hobbs and the mechanics were
13 exposed to the elements as they tried to diagnose the problem.
14 Supervisor Brazinski also confirmed that he knew that Respondent
15 Hobbs was meeting with Student Sonnenberg regarding the checkride
16 on September 9th, 2021.

17 At the conclusion of Supervisor Brazinski's testimony,
18 Respondent rested his case.

19 Credibility determinations.

20 Alexander Falco-Sonnenberg. Mr. Falco-Sonnenberg answered
21 questions -- counsel's questions from both sides without
22 hesitation. His demeanor was comfortable. After seeing the
23 ramifications of what can happen in these situations Mr. Falco-
24 Sonnenberg had every reason to be honest and truthful. In
25 addition, his testimony in the hearing was consistent with the

1 evidence presented.

2 In his e-mail to Inspector Lewis, Mr. Falco-Sonnenberg stated
3 that he would be more diligent in double-checking all information
4 and not taking anything at face value. I believe his statement to
5 be honest and sincere. Based upon these reasons, I find
6 Mr. Falco-Sonnenberg credible.

7 Designated Pilot Examiner Keith McGill. Mr. McGill's demeanor
8 was comfortable and straightforward. He stuck to the facts as he
9 knew them to be. And after listening to his testimony, it was
10 apparent that Mr. McGill takes his job as an examiner seriously.

11 Towards the end of his testimony, Mr. McGill was asked
12 whether he had determined that Respondent Hobbs had intent to
13 deceive. Without hesitation, he responded that he had not come to
14 that conclusion. Based on these reasons, I find Mr. Hobbs -- I'm
15 sorry -- Mr. McGill credible.

16 Aviation Safety Inspector Douglas Lewis. Mr. Lewis provided
17 straightforward testimony. He is well versed in procedures in the
18 Federal Aviation Regulations. During a tough cross-examination,
19 Mr. Lewis admitted and took responsibility of any errors,
20 omissions, and mistakes on his investigative reports and
21 conversation memo. Based on these reasons I find Mr. Lewis
22 credible in all respects.

23 Respondent Ethan Hobbs. In evaluating Mr. Hobbs' demeanor to
24 questions posed, I found him to be sincere and forthcoming. At no
25 time was Respondent Hobbs' testimony evasive. Instead, his

1 responses were detailed as if afraid to leave any details out.
2 His statements, explanations, and assertions were credible and
3 corroborated with other evidence. Based on these reasons, I find
4 Mr. Hobbs credible in all respects.

5 Supervisor Wayne Brazinski. Mr. Brazinski is Respondent
6 Hobbs' employer; thus, I considered bias, motive, and interest in
7 evaluating his credibility. I did not glean any bias in his tone,
8 demeanor, or responses. His answers were within the perimeters of
9 the questions posed. His testimony was helpful, consistent with
10 the evidence.

11 Mr. Brazinski appeared on his own volition, appeared on
12 Respondent Hobbs' behalf, and kept him on the payroll. That alone
13 speaks for itself. I found Mr. Brazinski credible in all
14 respects.

15 JUDGE TAPIA: Let's go off the record.

16 (Off the record at 1:01 p.m.)

17 (On the record at 1:08 p.m.)

18 JUDGE TAPIA: In closing, the FAA argues that if it were not
19 for Examiner McGill's keen eyes, Student Sonnenberg might have
20 been issued a private pilot certificate.

21 Respondent Hobbs' altered the logbook so that Student
22 Sonnenberg would meet the minimum requirements by massaging the
23 numbers to create hours that did not exist.

24 The FAA argues that because Student Sonnenberg did not
25 provide Examiner McGill an explanation for the alteration,

1 Respondent Hobbs gave the first story. He claimed it was an
2 accident because he applied the expected hours instead of the
3 actual hours from Flight Schedule Pro. However, the numbers
4 displayed on the software did not align with the hours logged.
5 The FAA argues at no time was a Hobbs meter mentioned. Respondent
6 Hobbs was caught red-handed. He then began to tell a series of
7 conflicting stories to justify the altered logbook.

8 Respondent Hobbs' second story was that they thought the July
9 18th flight was on the plane without a Hobbs meter and that the
10 aircraft noted in the logbook was supposed to be down for
11 maintenance. The FAA argues that the tail number should have been
12 changed if the specific plane was so important. Respondent Hobbs
13 then erroneously rounded the hours from 2.2 to 2.5 hours.
14 However, Respondent Hobbs' story did not explain why Student
15 Sonnenberg wrote down the newer aircraft in his logbook or why
16 Respondent Hobbs instructed him to round up.

17 The FAA argues all the information was verifiable with flight
18 school records; however, Respondent Hobbs did not verify it
19 because, the FAA argues, he knew the truth.

20 His third story was that they had flown on the older aircraft
21 the day before the July 18th flight, a flight that the FAA argues
22 never occurred. According to the FAA, Respondent Hobbs' fourth
23 story was his story at the hearing.

24 The FAA pointed out that Respondent Hobbs never mentioned the
25 July 18th flight in his e-mail to Inspector Lewis. He testified

1 he made another mistake when telling Examiner McGill what day he
2 had gone over the logbook with Student Sonnenberg. Further, the
3 FAA argues that Respondent Hobbs testified that he was nervous and
4 forgot to tell Examiner McGill about the Hobbs meter.

5 The FAA argues that if it was an innocent mistake, then why
6 was Respondent Hobbs so nervous? Why not just explain? How many
7 mistakes must one make before it's intentional? The FAA argues
8 that Respondent Hobbs' mistakes were intentional.

9 On behalf of Respondent Hobbs, Counsel argues there was never
10 an intent to increase hours because Respondent Hobbs and Student
11 Sonnenberg believed that all the required hours were met. If
12 Respondent Hobbs believed that Student Sonnenberg needed flight
13 hours, there was sufficient time to obtain them before the
14 checkride. He argues there was no urgency.

15 Examiner McGill testified that although there were better
16 ways to modify a change in the logbook, using Wite-out was
17 acceptable and that, in Examiner McGill's opinion, it does not
18 appear to be an attempt to hide the correction from view.

19 Student Sonnenberg sent Respondent Hobbs a text message after
20 he landed on the July 18th flight. Counsel argues that the text
21 message may have caused the initial confusion. Counsel points out
22 that Inspector Lewis' conversation memo with Respondent Hobbs was
23 an unsigned version that the inspector admitted, it was not the
24 final version. A final version, Counsel argues, that neither he
25 nor Respondent Hobbs has ever seen.

1 During that phone call, Inspector Lewis had an opportunity to
2 discuss various issues he had learned throughout the investigation
3 with Respondent Hobbs. However, he chose not to follow up.
4 Inspector Lewis confirmed that certain representations in his
5 conversation memo were inaccurate.

6 Respondent Hobbs also sent Inspector Lewis documentation of
7 the July 9th flights after their phone call to further support his
8 explanation but Inspector Lewis ignored it. Counsel argues that
9 Inspector Lewis testifies he should have included the e-mail in
10 the investigative report. However, he took issue with the fact
11 that the stories seem to change when he compared the e-mails from
12 Examiner McGill, Student Sonnenberg, and Respondent Hobbs, and
13 potentially in conjunction with the inspector's inaccurate
14 conversation in the conversation memo with Respondent Hobbs.

15 Counsel argues that Respondent Hobbs is permitted to access
16 the reasonable portions of administrative investigative report
17 which was absent in this case. Respondent Hobbs had to defend
18 himself without all the parts of the investigative report and
19 without knowledge of the information or why the FAA decided to
20 move forward with this revocation action.

21 In addition, Counsel argues that documentation within the
22 investigative report was shown to be inaccurate. He argues that
23 some dates did not match up between Inspector Lewis' conversation
24 memo and the case statement written in the investigative report.

25 Regarding FAA's argument of changing stories, Counsel argues

1 that Respondent Hobbs was upfront and honest about his mistake
2 from the beginning. It is clear, Counsel points out, that
3 numerous errors were uncovered concerning Inspector Lewis'
4 investigation and how he documented it in his report. Errors do
5 occur. Maybe we should not punish people for honest mistakes as
6 in Respondent Hobbs' case.

7 Counsel argues that Respondent Hobbs presented credible
8 testimony to support various factors that created his mistake.
9 Respondent Hobbs testified to the text message that provoked him
10 to go down the wrong path and that the Hobbs meter issue that
11 caused him to modify the flight time on the logbook. Counsel
12 argues that Respondent Hobbs provided good explanations. Fatigue
13 got the best of him that day. He presented his grueling schedule
14 over the previous days in detail. His fatigue negatively affected
15 his ability to make crucial decisions which explains his errors.

16 As to Respondent Hobbs' nervousness or losing his train of
17 thought at the hearing, Counsel argues being questioned on one's
18 professionalism is not a situation where one would feel
19 comfortable. Counsel argues that is -- that his nervousness
20 should not be a reflection of his credibility.

21 Counsel argues the FAA did not offer any potential motive.
22 The FAA has only come up with a conclusory statement that
23 Respondent Hobbs altered the flight hours so Student Sonnenberg
24 could meet the requirements for the checkride.

25 In rebuttal the FAA argues that Respondent Hobbs did not give

1 his complete story initially to Examiner McGill, thus Respondent
2 Hobbs was not always forthcoming.

3 As to Inspector Lewis' errors in the investigative report,
4 essentially typos, the FAA argues they are hardly material or
5 relevant. Further, Inspector Lewis' testimony that not including
6 the July 9th flight information that Respondent Hobbs sent him
7 after their conversation did not affect his conclusion because it
8 was irrelevant.

9 The FAA argues that Respondent Hobbs had full knowledge of
10 the falsity. He met with a scholarship student he had been
11 working with, knew the hours were short, and made them up. The FAA
12 argues that making up hours and rounding them up incorrectly is
13 clear knowledge that the hours were false.

14 Lastly, the FAA points out that Respondent's Counsel is
15 making motive a big deal. Motive is not required under the three
16 standard elements that the FAA must prove, thus the FAA has met
17 its burden.

18 A preamble before I discuss the evidence and Hart v. McLucas.

19 We can all agree that air safety is the goal, and any
20 violations of the Federal Aviation Regulations are taken very
21 seriously.

22 After presenting my tentative decision on the merits and
23 reading the closing briefs on sanctions a few weeks later, I felt
24 the record did not support revocation or suspension.

25 To reconcile several lingering questions, I went straight to

1 the official transcript to determine why I believed the Acting
2 Administrative sanctions were inappropriate. In other words, what
3 findings of fact support that FAA's proposed sanction is improper?

4 Equally important to mention, if not more important, I gave
5 considerable thought to the evidence as a whole to ensure that I
6 was not embarking on a tunnel vision path.

7 The Complaint alleges the Respondent Hobbs violated Section
8 61.59(a)(1) and (a)(2) of the Federal Aviation Regulations by
9 making or causing to be made an intentionally false entry in a
10 student pilot logbook. The seminal case, Hart v. McLucas, cited
11 at 535 F.2nd 516, 519, 9th Circuit, 1976, provides a three-prong
12 standard to prove intentional falsification claims. The FAA must
13 prove false representation was made in reference to a material
14 fact and with knowledge of the falsity of the fact.

15 Respondent made a false representation. In his answer to the
16 Complaint, Respondent Hobbs admitted that Student Sonnenberg
17 completed the logbook entry for the flight referenced by logging a
18 flight time of 1.7 hours. He admits that on September 8th, 2021,
19 he altered Student Sonnenberg's logbook to indicate a flight time
20 of 2.3 hours. Respondent Hobbs later admitted that the original
21 entry of 1.7 hours was correct.

22 On September 9th, 2021, Respondent admitted that on Student
23 Sonnenberg's application for issuing a private pilot certificate,
24 FAA Form 8710-1, he attested that he instructed Student Sonnenberg
25 and considered him ready to take the test. Based on Respondent

1 Hobbs' admission, I find that the first prong of the Hart v.
2 McLucas standard has been established.

3 The false representation was in reference to a material fact.
4 The Board has continuously held that a statement is false
5 concerning a material fact under the standard if the alleged
6 falsehood could influence the Acting Administrator's decision
7 concerning compliance with the Federal Aviation Regulations. The
8 Board precedent is also clear that logbooks are maintained to
9 demonstrate compliance with the regulations and, thus, are
10 material. I cite Twomey v. NTSB 821, F.2nd 63, 1st Circuit, 1987.

11 In his Answer to the Complaint, Respondent Hobbs acknowledged
12 that the entry is part of a logbook that must be kept, made, or
13 used to show compliance with any requirement for issuing or
14 exercising the privileges of any rating certificate or
15 authorization. Respondent Hobbs also admitted that this statements
16 were material and that they had the natural tendency to influence
17 or were capable of influencing others and FAA in issuing a
18 certificate under Part 61. Based on Respondent Hobbs' admission,
19 I find that the second prong of the Hart v. McLucas standard has
20 been established.

21 The third prong is knowledge of the falsity of the fact. In
22 Administrative versus Hartwig, NTSB Order EA-2859 in 1989, the
23 Board noted that "direct evidence of an individual's intent is
24 rarely available. Intent is a matter that ordinarily is provable
25 indirectly through whatever reasonable inferences which may be

1 taken from known facts and circumstances." In Administrator
2 versus Dillmon, the NTSB Order No. EA-5528, 2010, the Board held
3 that credibility findings are necessary in falsification cases.

4 Respondent Hobbs made a false representation without the
5 knowledge of the falsity of the fact.

6 Exhaustion contributed to Respondent Hobbs' unintentional
7 mistakes. From the onset Respondent Hobbs made it known that he
8 was exhausted on the night he reviewed the logbook. In an e-mail
9 to Inspector Lewis, Respondent Hobbs told him that the fatigue may
10 have contributed to his mistake. He explained that days before
11 reviewing the logbook, a JWA aircraft was stranded on Mackinaw
12 Island and that he had to fly the mechanics to the island in
13 challenging weather.

14 In an e-mail to Inspector Lewis, Student Sonnenberg
15 summarized his recollection of the events on the evening he
16 reviewed his logbook. He corroborated Respondent Hobbs' testimony
17 and stated that Respondent Hobbs had just returned late that
18 evening from "numerous long flights that week," and that he
19 believed the mistake was due to exhaustion.

20 At the hearing Student Sonnenberg testified that it was
21 evident that Respondent Hobbs looked tired and that Respondent
22 Hobbs told him that he was exhausted.

23 At the hearing Supervisor Brazinski also corroborated
24 Respondent Hobbs' testimony about the flights and stranded plane.
25 He explained that Mackinaw Island is a primitive airport so

1 Respondent Hobbs and mechanics were exposed to the elements as
2 they attempted to diagnose the engine problem.

3 Instead of investigating the defense of exhaustion that may
4 have led to the mistake, Inspector Lewis chose not to verify their
5 assertions with JWA records and flight information. He also
6 decided not to interview Supervisor Brazinski or the mechanics.

7 Inspector Lewis should have confirmed Respondent Hobbs'
8 statements and, if accurate, closed the investigation with a
9 warning letter or at minimum considered it and then dismissed it,
10 articulating specific reasons in his investigative report as to
11 why the exhaustion defense was unacceptable to the FAA. Instead
12 Inspector Lewis completely ignored it as if irrelevant. It was
13 relevant because Respondent Hobbs tried explaining how the error
14 may have occurred.

15 If arguendo Respondent Hobbs had testified that he was
16 exhausted due to long days teaching students and because of
17 fatigue he made an unintentional mistake on his student's logbook,
18 end of defense, then the outcome of this day most likely not --
19 would have been different.

20 Under the these facts, Respondent Hobbs' workweek was
21 remarkably challenging and not your typical day at flight school.
22 The evidence shows that Respondent Hobbs flew close to 15 hours in
23 bad weather, which takes intense focus and mental energy, not to
24 mention hovering over a stranded plane at a primitive airport to
25 diagnose engine problems under rainy conditions.

1 It was a perfect storm of circumstances that made Respondent
2 Hobbs vulnerable to making a mistake. Respondent Hobbs testified
3 in detail of his workweek days before reviewing the logbook.

4 On September 6, 2021, Respondent Hobbs testified that
5 Supervisor Brazinski informed him that a JWA airline -- I'm sorry
6 -- airplane was stranded on Mackinaw Island. He then left that
7 airport and drove to Joliet Airport to pick up a Cessna 182. He
8 filled the aircraft with fuel and then flew to Clow Airport to
9 pick up the mechanics and load the plane with tools.

10 They flew the three and-a-half hour trip to the island in
11 cold, windy, rainy, and turbulent weather. Once there, Respondent
12 Hobbs testified that he and the mechanic had to tie down the
13 aircraft before conducting a series of tests to diagnose the
14 engine problem. They discovered it was producing insufficient RPMs
15 to fly it back safely, so they removed the cowling and performed
16 checks on the cylinders. After pulling out the cylinder, they
17 discovered that the exhaust valve was jammed open. He estimated
18 the time spent working on the engine was about four to five hours.
19 Without a new cylinder, nothing else could be done.

20 In turn they put the cowling back on, tied down the plane
21 before flying the three and-a-half hour trip back to loud airport.
22 He estimated they arrived around 10 p.m. Before heading home,
23 Respondent Hobbs testified that he had to refuel the airplane and
24 fly it back to Joliet airport.

25 In the early hours of September 8th, 2021, Respondent Hobbs

1 testified that he went back to Joliet Airport to conduct his
2 preflight before flying to Clow Airport around 6:45 a.m. to pick
3 up two mechanics, load the aircraft with parts and tools, and fly
4 back to Mackinaw Island. He testified that the flight took longer
5 than three and-a-half hours due to rain and headwinds. Due to
6 heavy clouds, Respondent Hobbs testified that he had to rely on
7 his instruments.

8 Upon landing at Mackinaw Island, Respondent Hobbs testified
9 that they unloaded the aircraft, removed the cowling and engine
10 from the plane, all done under rainy conditions, which took hours
11 before we could conduct another run-up. Although the RPMs were
12 higher, flying back to the mainland was still unsafe. After
13 several tests on the ignition system, Respondent Hobbs testified
14 that the engine started to shudder. Finding no resolution, one of
15 the mechanics had to fly the airplane across to Mackinaw City as
16 he followed in a Cessna. Once there, they tied down the plane for
17 maintenance and flew the three and-a-half hours back to Clow
18 Airport under IMC conditions.

19 Once at Clow Airport, Respondent Hobbs testified that he
20 dropped off the mechanics, unloaded tool and parts, and left the
21 airplane there to rush to meet Student Sonnenberg who was waiting
22 for him to review his logbook.

23 Unbeknownst to Respondent Hobbs, his extreme exhaustion set
24 the events to follow in motion leading to severe errors.

25 Respondent Hobbs displayed clear symptoms of exhaustion.

1 Inspector Lewis and Examiner McGill took issue that Respondent
2 Hobbs was unable to accurately explain the logbook change when he
3 was confronted the day of the exam. Examiner McGill testified
4 that Respondent Hobbs could not explain where or how the 2.3 hours
5 had been generated, which troubled him.

6 Instead Respondent Hobbs presented the first of several
7 stories which Inspector Lewis called "an evolving story." He
8 testified that whenever the stories start to change, that lends
9 him to believe that this was done for a reason.

10 Although it may be true that Respondent Hobbs could not
11 initially explain how he went from Point A to Point B, had
12 Inspector Lewis and Examiner Mr. McGill thoughtfully considered at
13 some point that Respondent Hobbs' experienced severe fatigue, then
14 Respondent Hobbs not remembering would be a reasonable premise to
15 accept. Moreover, Inspector Lewis had more to rely on than
16 Respondent Hobbs' words alone. Respondent Hobbs had reliable
17 evidence to support his contention.

18 An argument can be made that a person suffering from severe
19 fatigue was working, for the lack of a better word, on autopilot.
20 A person would most likely not remember exactly the path one took
21 if they were extremely fatigued.

22 At the hearing Respondent testified the next day after
23 speaking to Examiner McGill, he talked to the JWA owners and tried
24 to figure out what happened for him to make such a mistake. He
25 testified that it was serious to him and JWA because if a student

1 is not allowed to take their checkride because of an instructor's
2 mistake, JWA takes issue. Without delay Respondent Hobbs focused
3 on getting to the root of how he made this mistake.

4 What I found troubling is that the explanation Respondent
5 Hobbs attempted to convey, that he was extremely exhausted because
6 of a stranded plane crisis preceding the alteration in the
7 logbook, was never acknowledged which begs the question. Was it
8 never ignored because it was an explanation that would bear fruit?

9 One must remember that the trier of fact also brings life
10 experiences to her decision. Mistakes are inevitable when severe
11 fatigue is a factor because it degrades our decision-making
12 process.

13 At the hearing Inspector Lewis testified that investigation
14 was warranted because certifying a pilot for hours is taken very
15 seriously. Equally, I note that it follows that Respondent Hobbs'
16 evidence should also have been taken seriously.

17 Inspector Lewis testified that after reading Examiner
18 McGill's e-mail, his immediate impression was that the cross-
19 country hours were changed to qualify Student Sonnenberg for the
20 exam because Respondent Hobbs' story "did not add up."

21 At that time Inspector Lewis had not yet heard from
22 Respondent Hobbs, which leads me to infer that Inspector Lewis may
23 have already made up his mind. Respondent Hobbs was going to go
24 down hard with a revocation.

25 At the hearing the FAA neither questioned Student Sonnenberg,

1 cross-examined Supervisor Brazinski, nor Respondent Hobbs
2 regarding Respondent Hobbs' contention of exhaustion or his
3 grueling schedule, a schedule that may have been a factor in
4 making a mistake. Most telling, the FAA did not rebut, dispute,
5 or consider it as if it did not matter. It mattered.

6 Respondent Hobbs' attestation on Form 8110-1 was truthful
7 when signed. At the hearing Student Sonnenberg that he believed
8 he had the required hours to qualify for his checkride. Reviewing
9 the logbook, he noted that he exceeded the minimum hours needed in
10 most categories. He testified there was enough time and good
11 weather before his checkride to fly solo cross-country hours. He
12 testified there was no urgency to make up hours.

13 Respondent Hobbs testified that he did not believe that
14 Student Sonnenberg was short in hours. He testified that
15 similarly to Student Sonnenberg, there was no urgency to make up
16 hours. Consequently, if both Student Sonnenberg and Respondent
17 Hobbs believed that no additional hours were needed, which I find
18 credible, then it follows that Respondent Hobbs believed on that
19 date that Student Sonnenberg had met the requirements and his
20 attestation on Form 8710-1 was truthful.

21 Respondent Hobbs had no reason to alter the logbook, which
22 supports his contention of a mistake. If we were to assume that
23 Respondent Hobbs made a change knowingly, that he was incorrect,
24 then he would have had to change -- or he would have had to cover
25 his tracks like making the change less conspicuous, changing the

1 tail number to reflect the airplane purportedly used and getting
2 his stories straight.

3 The FAA vigorously argued that Respondent Hobbs did it for a
4 reason to qualify Student Sonnenberg for the checkride. However,
5 the evidence does not support the argument that Respondent Hobbs
6 was trying to make up deficient hours.

7 At the hearing Respondent Hobbs and Student Sonnenberg
8 testified that there was sufficient time to make up hours before
9 the checkride. Student Sonnenberg testified that he had flown on
10 September 9th, the day before the checkride. If he needed to make
11 up hours, he would have done them on that day.

12 For Respondent Hobbs to believe that his student met all the
13 requirements and that he was only correcting an error in the
14 logbook is reasonable; that is, it is less likely that Respondent
15 Hobbs would feel the need to essentially steal hours by
16 falsification to qualify his scholarship student who exceeded
17 hours in many categories. Respondent Hobbs also had absolutely
18 nothing to gain by falsifying the logbook.

19 Equally important, strongly -- the records strongly supports
20 that Respondent Hobbs was severely fatigued and relied on
21 information from his memory bank when he altered the logbook;
22 i.e., the July flights with Student Sonnenberg on the older
23 aircraft without a Hobbs meter and the Hobbs meter calculation
24 used by JWA.

25 The record does not support FAA's argument. The FAA argues

1 that if it were not for Examiner McGill's keen eyes, Student
2 Sonnenberg would have received his certificate despite being
3 unqualified.

4 The FAA also argues that Respondent Hobbs failed to verify
5 his entry despite that the information was verifiable through
6 flight school records. The FAA argues that Respondent Hobbs did
7 not confirm his entry because he knew the truth.

8 The FAA argues that the most significant issue is the Hobbs
9 meter calculation and that Respondent Hobbs never explained why
10 the hours were rounded up.

11 The FAA also argues that one of the Respondent Hobbs' stories
12 was that he and Student Sonnenberg had flown on the older aircraft
13 on a day prior to the July 18th, 2021, flight, a flight that the
14 FAA argues never occurred.

15 The FAA also claims that Respondent Hobbs made another
16 mistake when he told Examiner McGill that he had gone over the
17 logbook with Student Sonnenberg the day before the exam and then
18 later changed his story to two days before the exam, a sign that
19 the FAA argues is of his evolving story.

20 I respectfully disagree. First, Respondent Hobbs'
21 modification was conspicuous on the logbook. At the hearing
22 Inspector Lewis admitted the change was noticeable. By viewing
23 the change in Student Sonnenberg's logbook, one adamantly would
24 have to conclude that it was meant to be seen.

25 Second, the FAA argues that Respondent Hobbs failed to verify

1 his change with the flight school records, yet it dismisses that
2 Inspector Lewis failed to confirm or acknowledge Respondent Hobbs'
3 claim of fatigue by interviewing Supervisor Brazinski and the
4 mechanics. The FAA also dismisses that Respondent Hobbs' flight
5 invoice dated July 29th, 2021, which may have explained or
6 supported the claim of mistake was also ignored and not
7 considered.

8 Third, as to the Hobbs calculation, the calculation rounding
9 up was linked to the chain of events that stemmed from fatigue.
10 Respondent Hobbs and Student Sonnenberg both testified that
11 Respondent Hobbs was fatigued and rounded up instead of down. The
12 FAA did not consider any evidence in line with fatigue, thus
13 Respondent Hobbs was defenseless in that regard.

14 Fourth, the FAA's argument that Respondent Hobbs' assertion
15 that he had flown with Student Sonnenberg on the older aircraft a
16 day prior to the July 18th flight never occurred, did occur and
17 identified in Exhibit R-1.

18 On October 21st, 2021, Respondent Hobbs told Inspector Lewis
19 in their phone conversation that he would be e-mailing him the
20 invoice to show that he and Student Sonnenberg had flown an N3333W
21 prior to the July 18th, 2021, flight. Respondent Hobbs stated it
22 would help explain how he came to his mistake.

23 In turn the FAA dismissed that document as irrelevant. The
24 evidence was not acknowledged in Inspector Lewis' phone memorandum
25 or his investigative report.

1 At the hearing, to his credit, Inspector Lewis testified that
2 his job is to include relevant information, and that looking back
3 at it now, it would have been in his best interest to include it
4 in his investigative report.

5 Fifth, the record evidence shows that Respondent Hobbs met
6 with Student Sonnenberg on two days the week of the checkride.
7 One day was to review the logbook and the other was to complete
8 the IACRA application. Respondent Hobbs confused the two dates
9 when he told Examiner McGill that he reviewed the logbook the day
10 before the checkride. Respondent Hobbs' correction makes logical
11 sense, yet the FAA still viewed it as part of his evolving story.

12 To that end, if the FAA had factored in severe fatigue, then
13 all other facts and circumstances presented in this case would
14 have fallen in place to show that it was more likely that
15 Respondent Hobbs made an honest, innocent mistake on September
16 8th, 2021, than an intentional act to falsify a record; therefore,
17 consistent with the record and the evidence, I find that
18 Respondent Hobbs harbored no intent to falsify Student
19 Sonnenberg's logbook.

20 Respondent Hobbs proved his affirmative defenses. In
21 Administrator versus Strickler, NTSB Order No. EA-5874, 2020,
22 provides that once the FAA proves a prima facie case of regulatory
23 violation, the burden shifts to respondent to demonstrate any
24 affirmative defenses by preponderance of the evidence.

25 The evidence in the record previously discussed supports

1 Respondent's affirmative defense that Respondent Hobbs lacked the
2 intent to violate the Federal Aviation Regulations as he
3 reasonably believed the information he entered on Student
4 Sonnenberg's logbook was proper and accurate.

5 The evidence in the record also supports Respondent Hobbs'
6 affirmative defense that Respondent Hobbs was unaware that the
7 information he entered was incorrect.

8 For the foregoing reasons, I find the Acting Administrator
9 did not meet his burden for the third prong of the Hart v. McLucas
10 standard.

11 Findings and order. Upon consideration of all the evidence
12 of record, I find that:

13 One, Complainant failed to show by a preponderance of the
14 substantial reliable and probative evidence a violation of Section
15 61.59(a)(1) and (2) of the Federal Aviation Regulations;

16 And, two, a safety in air commerce or air transportation and
17 the public interest do not require affirmation of the Acting
18 Administrator's order.

19 As such, I need not address Issue 2 regarding sanctions.

20 To the court reporter, please place the order on a separate
21 page.

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ORDER

IT IS THEREFORE ORDERED:

1. That the Emergency Order of Revocation, the Complaint herein, is hereby reversed.

Entered this 5th day of October 2022, at San Diego, California.

ALISA M. TAPIA

Administrative Law Judge

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APPEAL

JUDGE TAPIA: That concludes my initial oral decision.

For the record, counsel on both sides have acknowledged receipt of their rights to appeal.

I want to thank you, gentlemen, thank you to the FAA and Respondent's counsel. Both parties presented strong evidence.

And, Mr. Hobbs, good luck to you, sir. And good luck to your aviation endeavors.

We are off the record.

(Whereupon, at 1:40 p.m., the above-entitled matter was concluded.)

CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Ethan J. Hobbs
DOCKET NUMBER: SE-31083
PLACE: via Zoom videoconference
DATE: October 5, 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.



Darlene Engel
Official Reporter