

SERVED: September 29, 2026

NTSB Order No. EA-6034

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 29 day of September, 2026

_____	)	
BRYAN BEDFORD, ¹	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket SE-31192
	)	
WILLIAM S. IZZARD,	)	
	)	
Respondent.	)	
	)	
_____	)	

OPINION AND ORDER

Respondent appeals the written initial decision of Administrative Law Judge V. Stuart Couch, issued on May 24, 2024.² By that decision, the law judge found that the Administrator proved respondent violated 14 C.F.R. § 120.37(b)³ but modified the sanction from revocation to a 240-day suspension of respondent's airline transport pilot ("ATP") certificate, flight

¹ The original caption for this matter was Michael G. Whitaker, Administrator, Federal Aviation Administration v. William S. Izzard.

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

³ The relevant portion of section 120.37(b) prohibits a covered employee from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. Under 14 C.F.R. §§ 120.7(f) and 120.105, a flight crewmember is a covered employee.

engineer certificate, and flight instructor certificate in accordance with 14 C.F.R.

§§ 67.107(b)(2), 67.207(b)(2), and 67.307(b)(2).⁴ The law judge found the question of respondent's medical certificates moot. The Administrator and respondent timely filed cross appeals. For the reasons set forth below, the Board affirms the law judge's decision as to the finding of the regulatory violation and reverses the law judge's decision as to the sanction.

I. Background

A. Facts

At all times relevant hereto, respondent was employed as a pilot by Air Transport International, previously known as Capital Cargo International Airlines ("ATI").⁵ ATI is authorized to conduct operations pursuant to 14 C.F.R. Part 121 and has a drug and alcohol program subject to the requirements of 14 C.F.R. Part 120 and 49 C.F.R. Part 40 for testing safety-sensitive employees.⁶ As a pilot, respondent was subject to drug and alcohol testing under this program.⁷

On September 19, 2022, respondent was on home reserve duty with ATI.⁸ The same day, the ATI scheduling crew called respondent to inform him that he had been scheduled to act as pilot-in-command of several legs of flights carrying Amazon freight, with the first leg

⁴ The pertinent portions of sections 67.107(b)(2), 67.207(b)(2), 67.307(b)(2) state that the mental standards for a first-class, second-class, and third-class airman medical certificates include absence of an alcohol test result of 0.04 or greater alcohol concentration within the preceding two years.

⁵ Compl. at ¶ 2; Answer at ¶ 2.

⁶ Compl. at ¶¶ 3-4; Answer at ¶¶ 3-4. 14 C.F.R. Part 120 establishes a program for prevention of accidents and injuries due to the use of prohibited drugs or the misuse of alcohol by employees performing safety-sensitive functions in aviation. 49 C.F.R. Part 40 describes required procedures for conducting workplace drug and alcohol testing in the transportation industry.

⁷ Compl. at ¶ 5; Answer at ¶ 5.

⁸ Tr. at 141-43.

departing the Wilmington Air Park (“ILN”) at approximately 1:00 a.m. on September 20, 2022 (“flight 3505”).⁹ ATI scheduled respondent to report to ILN at 12:00 a.m., one hour prior to flight 3505’s departure.¹⁰ Respondent was paired with Neil Harding acting as the first officer.¹¹ At the time, ATI was under a contract with Hampton Inn, a hotel located near ILN, to provide rooms to ATI’s crew to rest and get ready for their flights and a shuttle to transport them to ILN.¹² Ahead of flight 3505, ATI reserved respondent a room at Hampton Inn and scheduled respondent a limousine to drive him to Hampton Inn.¹³ The limousine was to pick respondent up from the parking lot of an unidentified hotel in Florence, KY at approximately 2:00 pm.¹⁴ While waiting for the limousine pick-up in his car, respondent consumed between two-thirds and three-quarters of a bottle of vodka.¹⁵

On respondent’s arrival to Hampton Inn, Mr. Harding observed respondent to be heavily intoxicated, which he reported to ATI’s fleet chief pilot Travis Jordan around 4:07 p.m.¹⁶ In his written contemporaneous statement, Mr. Jordan stated that Mr. Harding described respondent as being able to “barely speak, smell[ing] of alcohol and need[ing] assistance out of his [limousine], help checking in, help walking, and pulling his luggage, to his assigned

⁹ *Id.* at 51, 141; Exh. A-4 (See the scheduling notation stating “3505 ILN” to “STL”).

¹⁰ Tr. at 51, 141; Exh. A-2 at 4.

¹¹ Exh. A-2 at 1, 4.

¹² Tr. at 65, 180.

¹³ *Id.* at 143, 148.

¹⁴ *Id.* at 143; Exh. A-4 (See the scheduling notation stating “GT/LIMO” to “ILN”). All times on the company’s schedule are Zulu (Coordinated Universal) Time. Tr. at 144. Eighteen hundred hours Zulu Time equals 2:00 p.m. Eastern Daylight Time, which was the time in use on September 19-20, 2022, in Cincinnati, OH and the neighboring areas.

¹⁵ Tr. at 146, 170.

¹⁶ *Id.* at 50; Exh. A-2 at 1, 4.

room.”¹⁷ Mr. Harding was concerned about respondent’s condition and being paired with him for flight 3505.¹⁸

Mr. Jordan arrived at Hampton Inn at approximately 11:00 p.m. on September 19, 2022, to check on respondent.¹⁹ After respondent missed the 11:40 p.m. shuttle from Hampton Inn to ILN, Mr. Jordan asked the hotel’s front desk to call respondent’s room.²⁰ Respondent came down to the lobby at approximately 12:00 a.m., wearing his pilot uniform, including epaulettes and wings, and carrying his travel bag.²¹ Upon greeting Mr. Jordan, respondent inquired of the whereabouts of Mr. Harding and stated that he had to “get going” to the airport.²² On noticing respondent’s bloodshot eyes and smelling alcohol on his breath, Mr. Jordan advised respondent that respondent had to take a breath alcohol concentration (“BAC”) test based on reasonable suspicion.²³

Thereafter, Mr. Jordan drove respondent to the drug and alcohol testing center at Clinton Memorial Hospital (“testing center”) approximately a 15-minute drive away from the hotel.²⁴ Respondent submitted to the BAC test without incident.²⁵ Respondent’s BAC concentration was 0.112 and 0.111 on a confirmation test.²⁶ After his BAC test, Mr. Jordan drove respondent back to Hampton Inn, arranged for respondent’s travel home, and placed him on administrative leave with ATI.²⁷ On September 22, 2022, respondent signed a Last Chance

¹⁷ Exh. A-2 at 4.

¹⁸ Exh. A-2 at 1, 4.

¹⁹ Tr. at 50; Exh. A-2 at 2.

²⁰ Exh. A-2 at 2.

²¹ Tr. at 53-54, 151.

²² *Id.* at 54; Exh. A-2 at 2, 4.

²³ Tr. at 54; Exh. A-2 at 2.

²⁴ Tr. at 55.

²⁵ Exh. A-2 at 3.

²⁶ Exh. A-8 at 2.

²⁷ Exh. A-2 at 5.

Agreement (“LCA”) with ATI to undergo substance abuse medical treatment in lieu of termination.²⁸

B. Procedural History and Testimony

On January 25, 2023, the Administrator issued the emergency order of revocation, revoking respondent’s ATP, flight engineer, and flight instructor certificates as well as his medical certificates dated February 24, 2021; August 4, 2021; February 15, 2022; and September 2, 2022.²⁹ On February 2, 2023, the Administrator filed the emergency order of revocation as the complaint in this case. The complaint alleged respondent violated 14 C.F.R. § 120.37(b) by reporting for duty to perform safety-sensitive functions on September 19, 2022, while having an alcohol concentration of 0.112 percent on a breath alcohol test and 0.111 percent on a confirmation breath alcohol test.³⁰ In the timely answer to complaint, respondent denied that he reported for duty to perform safety-sensitive functions on September 19, 2022.³¹

The law judge conducted a hearing on April 9-10, 2024. At the hearing, the Administrator called as witnesses Federal Aviation Administration (“FAA”) Inspector Shandra Perry; Mr. Jordan; and Dr. Russell Lewis, an FAA forensic toxicologist. Respondent testified on his own behalf and called Sean Kennedy Malone as a witness. After respondent rested his case, the law judge stated that he would be keeping the record open for respondent to submit any evidence of his alcohol addiction treatment that would be “helpful to the Court...to corroborate” respondent’s testimony on point.³² On April 15, 2024, respondent submitted such evidence along with supplemental exhibits, described as “R-27: 90 in 90 Meeting Logs[;] R-

²⁸ See Exh. A-12.

²⁹ Respondent waived the emergency timelines on January 31, 2023.

³⁰ Compl. at ¶¶ 14-16

³¹ Answer at ¶ 6, 8.

³² Tr. at 186.

28: Letter from Ruben Vasquez[;] R-29: Aftercare Progress Reports from Joseph Farone[;] R-30 Soberlink Test Results[; and] R-31: Cornerstone Discharge Letter.” Mr. Vasquez was respondent’s Alcoholics Anonymous sponsor, and Mr. Farone was respondent’s substance abuse counselor. The evidence overall documented respondent’s successful completion of the prescribed substance abuse treatment protocol and negative breathalyzer test results. On April 17, 2024, the Administrator objected to respondent’s supplemental exhibits as inadmissible hearsay under Federal Rules of Evidence 801(c) and on the basis of relevance.

1. Testimony of Administrator’s Witness: FAA Inspector Shandra Perry

Inspector Perry testified that she has been working as an enforcement investigator in the Special Investigations division of the FAA in the area of drug abatement for the past 16 years.³³ In this role, she investigated individuals who tested positive in or refused a Department of Transportation drug or alcohol test.³⁴ She stated that she was assigned respondent’s case in September 2022.³⁵ As part of her investigation, she sent respondent a letter of investigation and collected evidence, such as information from ATI concerning respondent’s alcohol test as well as interviews and statements from various witnesses.³⁶

Inspector Perry testified that she concluded that respondent reported for duty on September 19, 2022, because the flight crew’s “prep time” began at the hotel: the flight crew had a pre-flight duty meeting in the hotel lobby before leaving for the airport.³⁷ She

³³ *Id.* at 27-28.

³⁴ *Id.*

³⁵ *Id.* at 28.

³⁶ *Id.* at 28-31.

³⁷ *Id.* at 42.

acknowledged that respondent did not meet with the flight crew in the hotel lobby or perform any piloting for ATI on September 19 or 20, 2022.³⁸

2. Testimony of the Administrator's Witness: Travis Jordan

Mr. Jordan testified that in September 2022, he held the position of the fleet chief pilot at ATI, wherein he oversaw the first officers.³⁹ His prior experience included working as a captain, a check airman, and a chief standardization pilot and maintenance evaluator for various employers.⁴⁰ He testified that respondent's report time of 12:00 a.m. on September 20, 2022, was based on the ATI policy of requiring crews to report one hour before scheduled domestic flights.⁴¹ He testified that while pilots could perform certain pilot functions away from the assigned airport, Mr. Jordan denied respondent doing the same on September 19, 2022.⁴²

Mr. Jordan testified that on September 19, 2022, he received a call from Mr. Harding, who reported observing respondent intoxicated on respondent's arrival to Hampton Inn.⁴³ Mr. Jordan stated that he arrived to Hampton Inn later that day at 11:00 p.m. to assess respondent's condition.⁴⁴ He indicated that after he observed respondent missing the 11:40 p.m. shuttle to ILN, he asked the front desk to call respondent's room.⁴⁵ He further indicated that had respondent been fit for duty, respondent could have taken the next, 12:00 a.m., shuttle; ridden with Mr. Harding; or ordered a ride-hailing service.⁴⁶ Mr. Jordan testified that at approximately

³⁸ *Id.* at 42-43.

³⁹ *Id.* at 48-49.

⁴⁰ *Id.* at 49.

⁴¹ *Id.* at 52.

⁴² *Id.* at 52, 57, 61.

⁴³ *Id.* at 50.

⁴⁴ *Id.*

⁴⁵ *Id.* at 53.

⁴⁶ *Id.* at 50, 53, 67.

11:55 p.m. or 12:00 a.m., respondent came down to the Hampton Inn lobby wearing his full pilot uniform and carrying his go bag.⁴⁷ Mr. Jordan stated that respondent denied being late and asked where Mr. Harding was.⁴⁸

Mr. Jordan testified that after he noticed respondent having bloodshot eyes and smelling of alcohol, he advised respondent about needing to undergo a reasonable suspicion BAC test and drove him to the testing center.⁴⁹ Mr. Jordan indicated that on the drive to the testing center, respondent became nervous and told him that he had had a drink earlier in the day but that he “should be fine.”⁵⁰ Mr. Jordan testified that respondent wondered if he should call in sick or refuse to take the BAC test, which Mr. Jordan advised would be equivalent to a positive result.⁵¹

Mr. Jordan confirmed that at the time of respondent’s BAC test, respondent was still assigned to perform his flight duties for flight 3505.⁵² Mr. Jordan testified that ATI’s General Operations Manual indicated that up until one hour before a pilot was scheduled to report for duty, meaning 11:00 p.m. in respondent’s case, a pilot may call in sick or simply state he was not fit for duty without a recourse.⁵³

3. Testimony of the Administrator’s Witness: Dr. Russell Lewis

Dr. Lewis testified that he worked as the manager of the Forensic Sciences Section of the FAA’s Bioaeronautical Sciences Research Laboratory in Oklahoma City, OK, where he

⁴⁷ *Id.* at 53-54.

⁴⁸ *Id.* at 54.

⁴⁹ *Id.* at 54-55.

⁵⁰ *Id.* at 55.

⁵¹ *Id.*

⁵² *Id.* at 63.

⁵³ *Id.* at 64.

oversaw quality of analytical data and production of toxicology reports.⁵⁴ He had a Master's degree in Chemistry and had been in the forensic toxicology field for over 26 years.⁵⁵

Dr. Lewis testified that “[a]lcohol is the number one used and abused drug in the world,” with symptoms of alcohol intoxication including dizziness, lightheadedness, loss of inhibition, loss of fine muscle control and gross motor control, and loss of cognitive function such as loss of judgment.⁵⁶ He indicated that the severity of symptoms and the alcohol elimination rate depended on alcohol concentration levels – “the more alcohol, the more effects” – and other factors, such as alcohol experience, age, the type of alcohol consumed, disease state, etc.⁵⁷

Dr. Lewis testified that ingestion of alcohol produced breath ethanol as a result of alcohol being absorbed into the bloodstream and carried to the lungs' alveoli, which expired air.⁵⁸ He stated that it was this air that was tested by a BAC instrument.⁵⁹ Dr. Lewis testified that 90 percent of ethanol was eliminated from the body by being metabolized in the liver and 10 percent by breath and perspiration.⁶⁰ He stated that BAC testing device readings represented ethanol grams per 210 liters of breath.⁶¹ He further stated that BAC testing devices used fuel cell technology that converted breath ethanol into a current – the higher the current, the higher the ethanol.⁶²

⁵⁴ *Id.* at 70-71.

⁵⁵ *Id.*

⁵⁶ *Id.* at 75-76.

⁵⁷ *Id.* at 76, 78.

⁵⁸ *Id.* at 77.

⁵⁹ *Id.*

⁶⁰ *Id.* at 78.

⁶¹ *Id.* at 79.

⁶² *Id.* at 80-81.

Dr. Lewis testified that he reviewed the Enforcement Investigative Report (“EIR”) for respondent, including his BAC testing, and prepared an expert report.⁶³ He stated that respondent’s BAC levels of 0.112 and 0.111 would signify symptoms of poor judgment, loss of fine muscle control, and problems with divided attention even for a person who is a regular drinker.⁶⁴

4. Testimony of Respondent’s Witness: Sean Kennedy Malone

Mr. Malone testified that he was employed at ATI as a captain.⁶⁵ He stated that on September 19, 2022, ATI assigned him to “hot standby,” which was a term for an eight-hour on-call window that involved conducting a pre-flight check on a spare airplane in case another airplane broke down, he needed to cover an extra flight, or a pilot called in sick.⁶⁶ He stated that at approximately 12:00 a.m. on September 20, 2022, ATI called to inform him that he had been scheduled to pilot flight 3505 with Mr. Harding as the first officer.⁶⁷

5. Testimony of respondent

Respondent testified that he had been employed by ATI as a pilot since 1999 and had multiple commercial aviation ratings.⁶⁸ He stated that he had been a drinker prior to September 19-20, 2022, and drank on layovers or overnight trips when he had adequate time.⁶⁹

Respondent testified that on September 19, 2022, while waiting for the limousine to drive him to Hampton Inn, he consumed between two-thirds and three-quarters of a bottle of vodka to help relax him and get sleep ahead of his busy flight schedule on September 20,

⁶³ *Id.* at 75. *See* Exh. A-13.

⁶⁴ Tr. at 88.

⁶⁵ *Id.* at 123.

⁶⁶ *Id.* at 124.

⁶⁷ *Id.* at 125-27, 129.

⁶⁸ *Id.* at 130, 133.

⁶⁹ *Id.* at 136.

2022.⁷⁰ He stated that he had a total of about three drinks, with the size of his drinks getting progressively larger.⁷¹ He described his condition on the drive to the hotel as “heavily intoxicated.”⁷² He did not recall details about getting to his hotel room from the limousine, such as being helped by Mr. Harding.⁷³

Respondent denied performing any preflight preparation at Hampton Inn and stated that he slept in his room until the front desk woke him up with a phone call.⁷⁴ He stated that his typical routine was to request a wake-up call from the front desk and set an alarm on his cellphone, but he did neither on September 19, 2022.⁷⁵ He indicated that the front desk informed him that he had missed the 11:40 p.m. shuttle and asked if he wanted to take the 12:00 a.m. shuttle instead, to which he responded “yes.”⁷⁶ He indicated that he was startled by the call and hurried to put on his pilot uniform, pack, and get to the lobby.⁷⁷ He stated that he did not take the time to evaluate his condition because he was under an adrenaline-fueled rush to get to the lobby.⁷⁸ He explained that as a customer service-based provider, ATI stressed the importance of its employees being on time.⁷⁹ He estimated that it took him 15-20 minutes from the time of the front desk call to arrive to the lobby.⁸⁰

Respondent testified that upon encountering Mr. Jordan in the lobby, he inquired regarding the whereabouts of his co-pilot Mr. Harding, but then Mr. Jordan informed him that

⁷⁰ *Id.* at 144-47.

⁷¹ *Id.* at 168.

⁷² *Id.* at 170.

⁷³ *Id.*

⁷⁴ *Id.* at 149-50, 159-60.

⁷⁵ *Id.* at 149.

⁷⁶ *Id.* at 150.

⁷⁷ *Id.* at 150-51, 173.

⁷⁸ *Id.* at 174.

⁷⁹ *Id.* at 153.

⁸⁰ *Id.* at 152.

he needed to take a reasonable suspicion test and drove him to the testing center.⁸¹ He indicated that on the drive to the testing center, he “had the chance to reflect and start to consider [his] condition for flight” and told Mr. Jordan he needed to call in sick.⁸² He stated that Mr. Jordan told him that he could not do that at that point in time because he had already been notified of the need to take the test.⁸³

Respondent testified that after his positive BAC test, his employment with ATI continued but was conditional on obtaining treatment.⁸⁴ He stated that he underwent a 28-day inpatient treatment at Cornerstone of Recovery (“Cornerstone”) in Louisville, TN.⁸⁵ He indicated that since his discharge from Cornerstone, he continued with substance abuse treatment by going to Alcoholics Anonymous meetings and psychotherapy.⁸⁶ He admitted that he was an alcoholic and had had concerns about his alcohol addiction for about two years leading up to his BAC test on September 20, 2022.⁸⁷ He stated that he had been sober since then.⁸⁸ Respondent disagreed that he performed safety-sensitive functions or was on duty on September 19-20, 2022.⁸⁹ He stated that in the past, he called in sick after drinking alcohol because he recognized he was not safe to fly.⁹⁰

C. Law Judge’s Written Initial Decision

The law judge issued a written initial decision on May 24, 2024. The law judge

⁸¹ *Id.* at 154-55.

⁸² *Id.* at 155, 176.

⁸³ *Id.* at 156.

⁸⁴ *Id.* at 160.

⁸⁵ *Id.* at 160-61.

⁸⁶ *Id.* at 162-63.

⁸⁷ *Id.* at 182.

⁸⁸ *Id.* at 184.

⁸⁹ *Id.* at 163-64.

⁹⁰ *Id.* at 170.

determined that the Administrator proved the regulatory violation of 14 C.F.R. § 120.37(b) as alleged by a preponderance of the evidence but reduced the sanction of revocation to a 240-day suspension.⁹¹

In his decision, the law judge overruled the Administrator's objection that the supplemental evidence submitted by respondent on April 15, 2024, was irrelevant or inadmissible hearsay under F.R.E. 801(c).⁹² The law judge explained that the supplemental evidence corroborated respondent's testimony regarding his efforts to rehabilitate from alcoholism and that this evidence was relevant for the purposes of sanction mitigation.⁹³ Although the law judge acknowledged that the supplemental evidence "may meet the definition of hearsay as out of court statements offered to prove the truth of the matter asserted" under F.R.E. 801(c), he accepted it because he found that the application of F.R.E. 801(c) was "not practicable under the circumstances."⁹⁴ The law judge further indicated that even if inadmissible as hearsay, the supplemental evidence was "supported by sufficient guarantees of trustworthiness" under F.R.E. 807(a), the residual exception to the hearsay rule.⁹⁵ The law judge further added admission of the supplemental evidence "ensure[d] the fairness of this proceeding, eliminate[d] the unjustifiable expense and delay to reconvene a hearing, and [was] essential to ascertaining the truth and securing a just determination in this case."⁹⁶

In considering the merits of this case, the law judge found all witnesses and respondent credible.⁹⁷ The law judge further found that when respondent came down to the Hampton Inn

⁹¹ Written Initial Decision at 16.

⁹² *Id.* at 5.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* at 7.

lobby on September 19, 2022, he “reported for duty” within the meaning of § 120.37(b).⁹⁸ In arriving at this finding, the law judge considered whether the Administrator’s interpretation of the phrase “report for duty” was reasonable.⁹⁹ The law judge rejected respondent’s argument that an airman’s duty time began at the airport, explaining that such interpretation “could lead to disparate results, depending upon the contractual obligations of the airman involved.”¹⁰⁰

The law judge relied on 14 C.F.R. Part 120 definition of “performing” of a safety-sensitive function as “actually performing, [being] *ready to perform*, or [being] immediately available to perform [it]” and the Merriam-Webster’s definition of “report for duty” to be “to show up for work.”¹⁰¹ The law judge found that the following facts supported the finding that respondent was “ready to perform” his pilot duties on September 19, 2022: the limousine to Hampton Inn and the hotel room were reserved and paid for by ATI as a “logistical requirement” for respondent’s ability to perform as a pilot for flight 3505; respondent wore his pilot uniform and carried his travel bag when he came down to the hotel lobby; and respondent expected to take the hotel shuttle to ILN and inquired of his first officer’s whereabouts.¹⁰² The law judge concluded that these actions indicated respondent “was attempting to fulfill his assignment to serve as an aircrew member for ATI on flight 3505.”¹⁰³

The law judge reduced the sanction from revocation to a 240-day suspension, finding that the Administrator’s sanction of revocation was not warranted in law or justified in fact.¹⁰⁴ The law judge reasoned that the Administrator’s reliance on a list of single acts warranting

⁹⁸ *Id.* at 9.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 10 (emphasis added in the decision).

¹⁰² *Id.* at 10-11.

¹⁰³ *Id.* at 11.

¹⁰⁴ *Id.* at 12.

revocation in its sanction guidance was not warranted in law, explaining that the sanction guidance stated that a revocation was “generally” warranted for a violation of 14 C.F.R. § 120.37(b), with “generally” suggesting that a suspension could be an appropriate sanction.¹⁰⁵ The law judge added that “a rigid adherence to a ‘revocation is always appropriate’ sanction standard for all 14 C.F.R. § 120.37(b) violations without any consideration of mitigation evidence...would be inequitable, arbitrary, and capricious.”¹⁰⁶ The law judge further reasoned that revocation was without justification in fact because after his violation of the regulation, respondent successfully completed inpatient alcohol rehabilitation program, attended 90 Alcoholics Anonymous meetings, and tested negatively on breathalyzer tests.¹⁰⁷

Thus, the law judge found respondent’s rehabilitation efforts to be mitigating evidence.¹⁰⁸ After so finding, the judge noted that this case “can be viewed as on the outer limits of what constitutes ‘reporting for duty’ for purposes of § 120.37(b)” because “respondent violated the regulation in a hotel lobby away from the airport and before his contractual report time.”¹⁰⁹ The law judge also indicated that respondent did not “currently lack[] the nontechnical qualifications to hold his pilot certificates, as opposed to when the violation occurred or when the Administrator issued its emergency order.”¹¹⁰

The law judge determined that the issue of whether respondent was eligible to hold a medical certificate was moot because his medical certificates had expired.¹¹¹ Respondent and the Administrator appealed the law judge’s decision on July, 31, 2024. Both parties filed their

¹⁰⁵ *Id.* at 13.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 14.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 15.

¹¹¹ *Id.*

reply briefs on August 30, 2024.

D. Issues on Appeal

On appeal, respondent argues that the law judge erred in finding respondent violated 14 C.F.R. § 120.37(b). The Administrator argues in his appeal that the law judge erred in: (1) admitting post-hearing respondent's supplemental evidence because it violated the law judge's prehearing order and federal evidentiary rules; (2) failing to defer to the Administrator's sanction of revocation; and (3) finding the issue of respondent's medical certificates moot due to their expiration. In their reply briefs, the parties oppose each other's arguments for reversal.

II. Decision

While we give deference to our law judge's rulings on certain issues, such as credibility determinations,¹¹² we review the law judge's decision *de novo*.¹¹³

A. Respondent's Violation of 14 C.F.R. § 120.37(b)

Section 120.37(b) states that "[n]o covered employee shall *report for duty* or remain on duty requiring the *performance* of safety-sensitive functions while having an alcohol concentration of 0.04 or greater" (emphasis added). A "covered employee" includes an employee who performs flight crew member duties.¹¹⁴ The parties disagree whether respondent reported for duty on September 19, 2022, when he arrived at the Hampton Inn lobby and was determined to require to undergo reasonable suspicion alcohol testing. Respondent argues that in interpreting the meaning of "report for duty," the Board must rely on the U.S. Supreme

¹¹² *Administrator v. Porco*, NTSB Order No. EA-5591 at 13 (2011), *aff'd sub nom.*, *Porco v. Huerta*, 472 Fed.Appx. 2 (D.C. Cir. 2012) (per curiam).

¹¹³ *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).

¹¹⁴ 14 C.F.R. § 120.215.

Court decision in *Loper Bright v. Raimondo*¹¹⁵ and, thus, need not defer to the Administrator's interpretation that "report for duty" is not limited to an airman's arrival to the airport.¹¹⁶ Respondent further argues that the Administrator's interpretation is overbroad, and the law judge's reliance on it was in error.¹¹⁷

The Board disagrees that *Loper Bright* is applicable. The Supreme Court in *Loper Bright* held that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA [Administrative Procedure Act] requires."¹¹⁸ Here, respondent does not challenge whether the Administrator exceeded his statutory authority by promulgating 14 C.F.R. § 120.37(b). Rather, respondent challenges the reasonableness of the Administrator's interpretation of the FAA's regulatory language in section 120.37(b). Under the Supreme Court's decision in *Martin v. Occupational Safety and Health Review Commission*,¹¹⁹ the Board remains bound to give judicial deference to the Administrator's reasonable interpretation of the regulations he carries out.

In considering the meaning of "report for duty," the law judge considered not only the plain meaning of the phrase, but the Administrator's inclusion of being "ready to perform" in the definition of "performance" of a safety-sensitive function.¹²⁰ In arriving at his conclusion, the law judge considered ample factual evidence, including that, on his arrival to the hotel lobby, which was shortly before respondent was found to be required to undergo reasonable suspicion alcohol testing, respondent had donned his full pilot uniform, carried his travel bag,

¹¹⁵ 144 S. Ct. 2244 (2024).

¹¹⁶ Respondent's Appeal Br. at 6-7.

¹¹⁷ *Id.* at 7-10.

¹¹⁸ 144 S. Ct. at 2273.

¹¹⁹ 499 U.S. 144 (1991).

¹²⁰ See Written Initial Decision at 9-11. See also 14 C.F.R. § 120.7(i).

inquired as to the whereabouts of his first officer, and stated that he had to “get going” to the airport.¹²¹ These facts constitute the preponderance of the evidence showing respondent had reported for his flight crew duties ahead of flight 3505.

Respondent provides no legal support for his position that an airman cannot report for his or her duties unless he or she is at an airport or by an aircraft. In contrast, the Administrator’s position that an airman may report for his or her duty away from an airport or an aircraft is supported by the 14 C.F.R. Part 120’s regulatory framework. For example, the definition of “performance” of a safety-sensitive function includes readiness to perform it,¹²² and the regulations authorize operators to evaluate an employee for reasonable suspicion alcohol testing “just before the employee is to perform safety-sensitive functions.”¹²³ Here, respondent’s duty time as a pilot with ATI began at 12:00 a.m. on September 20, 2022.¹²⁴ Respondent came down from his hotel room to the hotel lobby wearing his pilot uniform and carrying his travel bag at or between 11:55 p.m. on September 19, 2022, and 12:00 a.m. on September 20, 2022.¹²⁵

On his arrival to the hotel lobby, respondent inquired as to the whereabouts of his first officer, stated that he was “ready to go” to the airport, and planned to take the next available airport shuttle.¹²⁶ That shuttle was scheduled to depart at 12:00 a.m. with a 10-minute ride to the airport.¹²⁷ Thus, at the time of his reasonable suspicion determination, respondent was minutes away from beginning to actually perform his safety-sensitive functions as a pilot.

¹²¹ See Written Initial Decision at 10-11. See also Exh. A-2 at 2, 4; Tr. at 53-54, 65, 151.

¹²² See 14 C.F.R. § 120.7(i).

¹²³ See 14 C.F.R. § 120.217(d)(3).

¹²⁴ Tr. at 137. See Exh. R-25 at 2.

¹²⁵ See Tr. at 53.

¹²⁶ See Exh. A-2 at 2, 4; Tr. at 150.

¹²⁷ See Tr. at 150, 180.

Contrary to respondent's argument, it was not necessary for respondent to actually perform any safety-sensitive functions while at the hotel, such as weather-related preflight preparation, for his conduct to fall under the meaning of section 120.37(b).

The Administrator argues that the policy behind 14 C.F.R. Part 120 is to prevent an intoxicated airman from getting closer to an actual operation of an aircraft.¹²⁸ The Board finds this policy reasonable as it is consistent with the stated purpose of 14 C.F.R. § 120.3 of establishing a drug and alcohol testing program that is “designed to help prevent accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol” by airmen.¹²⁹ The Board disagrees with respondent's argument that the only “ordinary and reasonable” interpretation of the phrase “report for duty” is when an airman is near the airport or the aircraft.¹³⁰ Without legal support, it is merely the interpretation that suits the respondent's case.¹³¹ Thus, the Board finds no error in the law judge's determination that respondent violated 14 C.F.R. § 120.37(b) on September 19, 2022.

B. The Law Judge's Post-Hearing Admission of Respondent's Supplemental Evidence

We review the law judge's procedural rulings under an abuse of discretion standard

¹²⁸ See Administrator's Reply Br. at 12.

¹²⁹ See 14 C.F.R. § 120.3.

¹³⁰ See Respondent's Appeal Br. at 10.

¹³¹ Respondent contends that there is no precedent to interpret “report for duty” as anywhere outside an airport or away from an aircraft. Respondent points to prior Board cases where violations of § 120.37(b) occurred at an airport. See Respondent's Appeal Br. at 9-10, citing to *Administrator v. Steadman*, NTSB Order No. EA-5925 (2022); *Administrator v. Poweleit*, NTSB Order No. EA-5167 (2005); and *Administrator v. Schroeder*, NTSB Order No. EA-5121 (2004). However, none of the cases cited by respondent stand for the proposition that an airman can only report for duty when he or she is at an airport or by an aircraft. The case *sub judice* is one of initial impression on the interpretation of the phrase “report for duty.” The Board's finding that the Administrator's interpretation is reasonable is not contrary to precedent.

after a party shows prejudice from the challenged ruling.¹³²

The Administrator argues that the law judge's post-hearing admission of respondent's supplemental evidence prejudiced his case by depriving him of the opportunity to review that evidence in preparation for the hearing or question witnesses about it during the hearing, and because the law judge used the evidence as the basis for sanction mitigation.¹³³ The Administrator further argues that the law judge abused his discretion by disregarding his own prehearing order, the Board's Rules of Practice, the Federal Rules of Civil Procedure ("F.R.C.P."), and the Federal Rules of Evidence.¹³⁴

The Board agrees that the law judge's admission of the supplemental evidence prejudiced the Administrator. The supplemental evidence was not admitted into the record before the hearing as required by the law judge's prehearing order, depriving the Administrator of a meaningful opportunity to review the evidence, cross-examine appropriate witnesses on the evidence, and rebut the evidence.¹³⁵ The law judge's decision to reduce the sanction from revocation to a 240-day suspension relies heavily on the supplemental evidence, which reflects respondent's post-violation rehabilitation efforts.¹³⁶ Without the opportunity to review the information in advance of the hearing and the ability to question any witnesses or in any way evaluate the information, the Administrator was unduly prejudiced and prevented from fully prosecuting his case.

Further, Federal Rule of Civil Procedure 26(a)(3) directs the parties to identify each

¹³² *Administrator v. Yerby*, NTSB Order No. EA-5771 at 10-11 (2016). *See, e.g., Administrator v. Giffin*, NTSB Order No. EA-5390 at 12 (2008). *See also Lackey v. FAA*, 386 Fed. Appx. 689, 696 (9th Cir. 2010).

¹³³ Administrator's Appeal Br. at 11-18.

¹³⁴ *Id.* at 12-16.

¹³⁵ Prehearing Order of October 23, 2023.

¹³⁶ *See* Written Initial Decision at 12-15.

document or other exhibit at least 30 days before trial. The law judge’s prehearing order was consistent with F.R.C.P. 26(a)(3) by directing the parties to exchange all exhibits at least 35 days prior to the hearing.¹³⁷ The Board’s Rules of Practice in Air Safety Proceedings (“Rules of Practice”) require the Board to adhere to the F.R.C.P. and the F.R.E. “to the extent practicable,” and 821.19(b) states that “parties *must* exchange information in accordance with the Federal Rules of Civil Procedure” (emphasis added).¹³⁸ Additionally, the law judge’s Prehearing Order of October 23, 2023, required parties to exchange information in accordance with the Board’s Rules of Practice and the F.R.C.P. as applicable and stated that any additional disclosures must be made no later than November 9, 2023, consistent with F.R.C.P. 26. Thus, the Board finds that the law judge abused his discretion by disregarding the Board’s Rules of Practice, the F.R.C.P., the F.R.E., and his own pretrial order by admitting the supplemental evidence into the record.¹³⁹ As such, the Board overturns the law judge’s decision as to the admission of respondent’s supplemental evidence.

C. Sanction

The Administrator argues that the law judge erred by finding that revocation was neither justified in law or fact and then reducing the sanction from revocation to a 240-day suspension of respondent’s airman certificates. The Board agrees. In *Pham v. Nat’l Transp. Safety Bd.*, et al., the Circuit Court of Appeals for the District of Columbia clarified the

¹³⁷ Prehearing Order at 3. (Oct. 3, 2023).

¹³⁸ See 49 C.F.R. §§ 821.5 (“for situations not covered by a specific Board rule, the Federal Rules of Civil Procedure [to] be followed to the extent practicable”) and 821.38 (“[t]he Federal Rules of Evidence will be applied in these proceedings to the extent practicable”).

¹³⁹ The Board’s finding is consistent with the purpose of the Pilot’s Bill of Rights to “restore fairness to airmen and Federal Aviation Administration enforcement proceedings.” 158 Cong. Rec. H5100-01, H5101 (2012) (statement of Rep. Bucshon). In passing this law, the Congress intended to provide these parties “with protections provided to defendants in other parts of our legal system.” *Id.*

deference the Board must afford the Administrator’s sanction selection.¹⁴⁰ Specifically, the Board may overturn the Administrator’s sanction only if it is “unwarranted in law or without justification in fact.”¹⁴¹

In the instant case, the Administrator’s choice of revocation as the sanction was not unwarranted in law. Despite the law judge’s conclusion that the qualifier “generally” in the Administrator’s sanction guidance indicates suspension may be an appropriate sanction for a violation of section 120.37(b), this, on its own, is insufficient to support a conclusion that the Administrator’s choice of revocation as the sanction in this matter was unwarranted in law.¹⁴² FAA’s choice of revocation is consistent with the sanction guidance.¹⁴³ Although the sanction guidance may state that the FAA “may” revoke or revocation is “generally” the sanction, the FAA has the discretion to choose. Here, the Board defers to the FAA’s discretion because the sanction of revocation is an option under the sanction guidance, permissible under applicable regulations, and consistent with the Administrator’s policy, and, therefore, the sanction of revocation is not unwarranted in law.¹⁴⁴

The Board further concludes that revocation was justified in fact. Here, respondent knowingly and deliberately drank between two-thirds and three-quarters of a 16-ounce bottle of vodka in the afternoon of September 19, 2022. Respondent did so while on home reserve

¹⁴⁰ See 33 F.4th 576 (D.C. Cir. 2022).

¹⁴¹ *Administrator v. Pham, On Remand*, NTSB Order No. EA-5936 at 19 (2022) (citing *Pham v. NTSB*, 33 F.4th 578 (D.C. Cir. 2022)).

¹⁴² See Written Initial Decision at 13. See also *Knight v. NTSB*, 2026 WL 2409462 at 7 (D.C. Cir. 2026).

¹⁴³ See FAA Order 2150.3C, FAA Compliance and Enforcement Program, Figure 9-5 at 9-14 (eff. Aug. 8, 2023).

¹⁴⁴ See, e.g., *Administrator v. Kirst*, NTSB Order No. EA-5955 at 60-61 (2023); *Knight v. NTSB*, 2026 WL 2409462 at 7 (finding that because “the Administrator’s choice of sanction was permissible under applicable regulations, the Administrator reasonably expected that the Board would defer to its choice of sanction” and, thus, warranted in law).

duty, waiting for the limousine service hired by his employer to transport him to an airport hotel, which the employer had reserved him to prepare to act as a pilot-in-command of flight 3505.¹⁴⁵ Respondent was so intoxicated that he could not recall arriving to the hotel; needed assistance getting up to his room, causing concern to his first officer; and overslept the shuttle to the airport.¹⁴⁶ Approximately an hour prior to his scheduled flight time, and while having blood alcohol content almost three times over the legal limit, respondent was fully intent on piloting flight 3505: he was dressed in his pilot uniform, carried his travel bag, inquired of the whereabouts of his first officer, stated he had to “get going” to the airport, and believed his physical condition was “fine” to pilot an aircraft.¹⁴⁷ At no point prior to the reasonable suspicion determination did respondent recognize that he was too intoxicated to operate a plane that night. None of these facts cause the Board to doubt that the Administrator’s choice of revocation as the sanction was justified in fact because they reflect respondent’s blatant disregard for air safety.

D. Respondent’s Medical Certificates

The Administrator contends that the law judge erred when he found that the revocation of respondent’s medical certificates was moot because they had expired.¹⁴⁸ The Board agrees with the Administrator. The Administrator authority extends to any certificate issued under Chapter 49 of the U.S. Code, and he is within his discretion to pursue an enforcement action consistent with that authority.¹⁴⁹ As such, the Board affirms the Administrator’s order revoking

¹⁴⁵ Tr. at 141-147, 170; Exh. A-2 at 1, 4.

¹⁴⁶ Tr. at 50, 150, 170; Exh. A-2 at 2.

¹⁴⁷ Tr. at 53-55, 150-151, 154-155, 173-174; Exh. A-2 at 2, 4; Exh. A-8 at 2.

¹⁴⁸ Administrator’s Appeal Br. at 30-31.

¹⁴⁹ See 49 U.S.C. § 44709(b). A first class medical certificate is valid for ATP privileges for six months for pilots over 40 years old, such as respondent. Therefore, respondent’s medical certificates dated February 24, 2021; August 4, 2021; and February 15, 2022, had expired at

respondent's ATP, flight engineer, and flight instructor certificates as well as his medical certificates dated February 24, 2021; August 4, 2021; February 15, 2022; and September 2, 2022.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is granted;
3. The law judge's written initial decision is affirmed as to the finding of the regulatory violation;
4. The law judge's written initial decision is reversed as to the sanction;
5. The Administrator's revocation of respondent's airline transport pilot ("ATP") certificate, flight engineer certificate, flight instructor certificate, and airman medical

the time of respondent's violation. Although the Board recognizes the Administrator's statutory authority to pursue enforcement actions against any certificate, the Board questions the utility of such actions against expired certificates. In his brief, the Administrator argues that a pilot without a current medical certificate may fly an aircraft under BasicMed or a light sport aircraft, but that the same privileges do not extend to a pilot whose *most recent* medical certificate has been revoked. Administrator's Br. at 31 (citing to 14 C.F.R. §§ 61.3(c)(2)(v) and (xiv), 61.23(c)(1)(ii) and (v), and 61.113(i)) (emphasis added). By this argument, the Administrator appears to suggest that only the September 2, 2022, certificate, which was the most recent and valid certificate, is relevant to respondent's ability to exercise the privileges of an airman certificate. Assuming the expired certificates were relevant to respondent's ability to exercise the privileges of an airman certificate, the basis for the Administrator's selection for revocation of the three expired certificates, when respondent presumably had many expired certificates before February 24, 2021, is unclear.

certificates dated February 24, 2021; August 4, 2021; February 15, 2022; and September 2, 2022, is affirmed.

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