

SERVED: February 5, 1992

NTSB Order No. EA-3484

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 27th day of January, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

KENNETH S. RIVARD,

Respondent.

Docket SE-9445

ORDER DENYING RECONSIDERATION

Respondent has filed a petition for reconsideration of Board Order EA-3413 (served October 23, 1991), in which we denied his appeal and affirmed the law judge's determination that he had violated section 91.89(a) of the Federal Aviation Regulations in connection with a flight occurring on October 27, 1987.¹ Upon consideration of respondent's petition and the Administrator's

¹In that order, the Board also denied the Administrator's appeal from that portion of the initial decision in which the law judge reduced the sanction he had ordered from a 30-day suspension of respondent's airline transport pilot certificate to one of 20 days.

reply in opposition, we have concluded that the petition neither identifies error in our original decision nor otherwise presents a valid basis for reconsideration thereof.²

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

KOLSTAD, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²In this regard, the Board has noted that respondent has, in support of his petition, cited an initial decision rendered in Administrator v. Davis, Docket SE-10546 (June 20, 1990), after the submission of appeal and reply briefs in this case. However, no appeal from that initial decision was perfected and the Board did not, therefore, have an opportunity to consider the validity of the law judge's decision in light of the factual record developed in that case. We therefore have no basis for determining whether the legal conclusions reached by the law judge in Davis were proper. It is for reasons such as this that our Rules of Procedure provide that "initial decision[s] shall not be deemed to be . . . precedent[s] binding on the Board." 49 C.F.R. § 821.43.