

SERVED: March 10, 1992

NTSB Order No. EA-3515

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 3rd day of March, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

DAVID M. BEAUDOIN,

Respondent.

Docket SE-12321

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Jimmy N. Coffman rendered in this proceeding at the conclusion of an evidentiary hearing held on January 14, 1992.¹ By that decision the law judge affirmed an emergency order of the Administrator revoking respondent's airman pilot certificate for his alleged violation of section 61.37(a)(5) of the Federal

¹An excerpt from the hearing transcript containing the initial decision is attached.

Aviation Regulations ("FAR," 14 CFR Part 61).² We will deny the appeal.

The Emergency order of Revocation addressed to respondent, dated December 19, 1991, alleges, in part, that:

- "1. At all times material herein you were and are the holder of Private Pilot certificate number 022444303.
2. On or about June 14, 1991, you appeared before an FAA Designated Written Test Examiner for the purpose of taking the Instrument Rating - Airplane written test.
3. The written test examiner issued to you test materials and you began the test.
4. While taking the test you cheated by using an unauthorized slip of paper containing information to aid you in answering test questions.
5. As a result of the above, you have demonstrated that you lack the necessary qualifications to hold a pilot certificate."

Respondent does not on appeal deny that he had a "cheat sheet" with him during the instrument rating written exam. He asserts, however, that he had not in fact used the unauthorized aid when the test examiner spotted it and terminated the exam. He thus contends that no violation of the regulation was committed. We must reject respondent's position.

²FAR section 61.37(a)(5) reads as follows:

"§ 61.37 Written tests: Cheating or other unauthorized conduct.

(a) Except as authorized by the Administrator, no person may--

* * * * *

(5) Use any material or aid during the period that test is being given...."

The respondent testified that he had not used the slip of paper with answers on it. However, the test examiner's testimony squarely contradicted that account. She stated that she observed respondent "looking intently" at a sheet of paper in his hand that he turned over and crumpled once he realized that he was being watched. The law judge, having observed the demeanor of both individuals as they testified and having evaluated their respective interests in the proceeding, credited the testimony of the examiner over that provided by respondent. Although respondent's appeal brief reflects his disagreement with the law judge's credibility choice, it identifies no basis for disturbing his assessment. Consequently, the finding that respondent violated section 61.37(a)(5) as alleged must be sustained.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and
2. The initial decision and the emergency order of revocation are affirmed.

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