

Inspection Authorization (IA) until such time as he successfully completes a re-examination of his qualifications to hold an IA. For the reasons discussed below, respondent's appeal is denied and the initial decision is affirmed.

The Administrator's re-examination request, made pursuant to section 609 of the Federal Aviation Act of 1958, as amended,³ was based on respondent's certification of a Cessna 150 as airworthy on December 1, 1993, following an annual inspection, when there were several unresolved discrepancies. Specifically, the Administrator alleged in his order that the aircraft was unairworthy at the time of respondent's inspection and sign-off because:

- 1) there were no Form 337s⁴ documenting the installation of several items on the aircraft: an MX-300 NAV-COMM digital radio, a KMA-128 King switching panel, an EGT gauge, an exterior strobe light, an ELT and antenna, a rotary switch, a Narco AT50A transponder, and a non-Cessna air filter;
- 2) there was no documentation indicating how the installation of the items listed above had affected the weight and balance of the aircraft;
- 3) respondent had also certified the completion of an annual inspection on November 12, 1992, when Airworthiness Directive (AD) 87-21-05 had not been
(..continued)
procedures for emergency actions.

³ Section 609 authorizes the Administrator to "reexamine any civil airman." 49 App. U.S.C. 1429 [now recodified at 49 U.S.C. 44709].

⁴ Certain major repairs and alterations must be documented on an FAA Form 337 and submitted to the FAA, with a copy provided to the aircraft owner. See 14 C.F.R. Part 43, Appendix A and B. The Form 337s then become part of the aircraft's permanent records, as maintained by the FAA and the aircraft owner. (Tr. 45, 99-100.)

complied with;

- 4) a rotary switch was not placarded as to function;
- 5) the compass correction card was unreadable;
- 6) an unknown type of circuit breaker was installed on the instrument panel, and there were no markings as to the size of the breaker; and
- 7) the ELT (emergency locator transmitter) was attached with Velcro to the carpet in the interior baggage compartment of the aircraft [rather than attached to the structure of the aircraft, as is required].

The Administrator requested that respondent submit to a written test covering the knowledge and skills necessary to be the holder of an IA, with emphasis on aircraft inspections. Respondent refused to undergo the requested re-examination, and this suspension followed. At the hearing, the Administrator's evidence established the existence of all but two of the cited discrepancies.⁵ Respondent, who acted pro se, pointed out that all of the items lacking Form 337s had been installed and maintained by other mechanics and IAs over the aircraft's 25-year history, and argued that he should not be held responsible for any record-keeping lapses they might have committed. However, he offered no evidence to rebut the existence of the bulk of the conditions and discrepancies listed in the complaint.

⁵ Regarding the MX-300 NAV-COMM radio, the FAA inspector indicated that a Form 337 documenting its installation was on file with the FAA (although a copy of this form was apparently not contained in the aircraft records). In addition, the law judge found no fault with respondent's sign-off of the 1992 annual inspection, since respondent's entry noted the non-compliance with the cited AD.

After rejecting respondent's procedural arguments (regarding notice and jurisdiction, discussed below), the law judge affirmed the emergency order of suspension, concluding that the evidence had shown the Administrator's re-examination request to be reasonable. We agree.

On appeal, respondent first argues that this action is barred by our stale complaint rule,⁶ and challenges the law judge's denial of his motion to dismiss. The law judge found that the "delay" in this case (between respondent's December 1,

⁶ 49 C.F.R. 821.33 provides, in pertinent part:

§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

* * *

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he shall proceed to a hearing on the lack of qualification issue only, and he shall so inform the parties. The respondent shall be put on notice that he is to defend against lack of qualification and not merely against a proposed remedial sanction.

1993 logbook entry, and the FAA's September 26, 1994 emergency order) was excusable for good cause, and thus was not grounds for dismissal under our stale complaint rule.

We agree that the chronology in this case⁷ would demonstrate good cause for a notification to respondent beyond the six-month limitation set forth in our stale complaint rule, if this case were subject to that limitation. However, the six-month limitation does not apply to cases such as this one which raise a

⁷ December 1, 1993 - Respondent's entry certifies the aircraft as airworthy after an annual inspection.

March 31, 1994 - a routine FAA ramp inspection of the subject aircraft reveals some of the discrepancies.

May, 1994 - review of the aircraft logbook reveals that respondent performed the most recent annual inspection.

May 19, 1994 - Letter requesting respondent to submit to a re-examination is mailed to respondent's last known address, but is returned undelivered.

June 8, 1994 - Another re-examination request is sent to respondent's last known address, but is again returned.

July 14, 1994 - Respondent informs the FAA's Saint Louis, Missouri, Flight Standards District Office (FSDO) that he has moved to their district and will be practicing there.

July 28, 1994 - The Saint Louis FSDO informs the Oakland, California, FSDO of respondent's new address.

July 29, 1994 - The Oakland FSDO issues another re-examination letter to respondent at his new address.

August 3, 1994 - Respondent refuses to take the re-examination.

September 26, 1994 - the FAA issues the emergency order of suspension which is the subject of this case.

legitimate question about the respondent's qualifications.⁸ Moreover, the "offense" at issue in this case is not respondent's sign-off (on December 1, 1993) of the annual inspection, but his refusal (on August 3, 1994) to comply with a reasonable re-examination request. The emergency order was issued less than two months after that refusal.

Respondent also challenges the FAA's authority to pursue a case against respondent in Missouri (where he now lives) when the investigating inspector is from the Oakland, California FSDO (where respondent previously lived and where the annual inspection giving rise to the re-examination request occurred). He also challenges the NTSB's jurisdiction to hold a hearing in a county other than the one where respondent currently lives. These arguments are frivolous. The FAA's authority to seek suspension of a certificate or rating is not limited by the geographical ties of its inspectors. And the only geographical limitation on the Board's authority to hear appeals in such cases is that the hearing must be in a "reasonable" location. 49 C.F.R. 821.37(a). Respondent requested a hearing in Missouri, and he has not alleged that he was prejudiced in any way by the hearing site chosen in this case.

Turning to the merits of the Administrator's suspension order, it is well-established that the Administrator may suspend a certificate or rating pending successful re-examination so long

⁸ See, e.g., Administrator v. Johnson, NTSB Order No. EA-3929 (1993).

as, when the evidence is viewed objectively, a reasonable basis exists for questioning the certificate-holder's competence.⁹ In this case, despite respondent's assertions that the allegations in the complaint were "disproved" and that he did nothing improper, the Administrator's evidence was largely un rebutted. That other IAs may also have erred over the years (by failing to submit the required paperwork, or by improperly certifying the aircraft as airworthy after an annual inspection), in no way changes respondent's independent obligation to ensure that major repairs or alterations have been properly documented on the required Form 337s before returning it to service after an annual inspection. Without Form 337s indicating that the alterations had been accepted by the FAA based on approved data, respondent would be unable to determine whether the aircraft met all applicable airworthiness requirements, as required by 14 C.F.R. 43.15(a).

Respondent incorrectly asserts that the law judge found he had committed no regulatory violations. The law judge stated,

. . . although as I indicated at the outset, [the evidence] *may not indicate that you have violated any maintenance FARs or record-keeping FARs*, . . . the Administrator's position that they want you to retest is a reasonable one under this evidence."

(Tr. 179, emphasis added.) It is clear from the record as a whole that this does not constitute a finding of non-violation.

⁹ See, e.g., Administrator v. Carson and Richter, NTSB Order No. EA-3905 (1993); Administrator v. Reinhold, NTSB Order No. EA-3973 (1993); and Administrator v. Norris, NTSB Order No. EA-3687 at 4 (1992).

Rather, we think the law judge was merely emphasizing -- as he did at the beginning of the hearing in response to respondent's claim that the Administrator had failed to specify any regulatory standard violated (Tr. 5-6) -- that the Administrator was not charging respondent with any regulatory violations. The Administrator was not required to allege or prove any regulatory violations in connection with this re-examination request, but was only required to demonstrate that a reasonable basis exists for questioning the respondent's qualifications to hold an IA. Respondent's approval of the subject aircraft as airworthy in spite of the numerous undocumented alterations and other discrepant conditions, provides such a basis. We are particularly alarmed by respondent's apparent belief that he had no responsibility to detect or notify the owner of these problems because they had existed for years.

In sum, we conclude that the Administrator's re-examination request was reasonable, and that respondent has established no basis to overturn the initial decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The suspension of respondent's Inspection Authorization shall continue until such time as he successfully completes the requested re-examination.¹⁰

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

¹⁰ The record indicates that respondent surrendered his IA certificate at the hearing.