

SERVED: September 5, 2000

NTSB Order No. EA-4856

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 5th day of September, 2000

---

JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-15998
v.	)	
	)	
DAVID RALPH BIGGER,	)	
	)	
Respondent.	)	
	)	

---

**OPINION AND ORDER**

Respondent, pro se, appeals the oral initial decision of Administrative Law Judge William A. Pope, II, rendered after an evidentiary hearing held on August 10, 2000.<sup>1</sup> By that decision, the law judge affirmed the Administrator's emergency order of revocation of respondent's private pilot certificate after affirming alleged violations of sections

---

<sup>1</sup> An excerpt from the hearing transcript containing the law judge's initial decision is attached.

61.3(a), 61.3(c)(1), 61.31(c), 61.31(d), 61.56(c)(1), 91.7 and 91.13(a) of the Federal Aviation Regulations ("FARs").<sup>2</sup> We grant the appeal, in part, but affirm the Administrator's revocation of respondent's private pilot certificate.

The Administrator's June 26, 2000, Emergency Order of Revocation alleges the following:

1. You hold Private Pilot Certificate 405664075.
2. On or about March 13, 17, 18, 21, 22, 23, 25, 30, 31 and April 2 and 26, 2000 you, as pilot in command, operated Civil Aircraft N6249X, a Hughes HU-369A (OH-6A), the property of another, on flights at Lowe Airport, Owensboro, Kentucky and other airports in the vicinity of Owensboro.
3. On the flights, you held privileges for airplane-single engine land only.
4. On the flights, you held no flight instructor endorsement authorizing you to conduct solo flight in a rotorcraft.
5. Prior to the flights, you had not successfully completed a flight review within the 24 months preceding the flight.
6. On the flights, N6249X was not registered to its owner, in that a temporary registration form expired on March 7, 2000.
7. On the flight of March 13, you did not hold an appropriate current medical certificate.
8. On the March 25 flight, you carried a passenger, your 10-year old son, aboard the rotorcraft.
9. After an inspection by representatives of the Administrator on April 5, 2000 you were advised that you could not fly the rotorcraft without proper ratings, training, endorsements and flight checks.

---

<sup>2</sup> The text of the applicable portions of the FARs is set forth in Appendix A.

10. After the April 5 inspection, the representative of the Administrator advised you that the aircraft was unairworthy in that:

a. Airworthiness Directive 95-03-13, then due for compliance, had not been complied with; and

b. the right front inside latch was broken.

11. On the April 26 flight, the damaged right front inside door latch had not been repaired and AD 95-03-13 had not been accomplished.

12. On the April 26 flight, you operated the rotorcraft to the Ohio County Airport in spite of being advised that you were not qualified to be pilot in command of such a flight.<sup>3</sup>

13. Your operations were reckless and endangered the lives and property of others.

14. As a result, you have demonstrated that you lack the qualifications to hold airman pilot ... certificate.

Prior to the hearing, in his June 29 Notice of Appeal, respondent admitted the solo flights in the helicopter between March 13 and April 2, denied the flight on April 26, and claimed he "was given verbal authorization" from his instructor to solo the helicopter. Respondent also admitted he did not have a current medical certificate at the time of the March 13 flight, and that he carried his son as a passenger on the March 25 flight. At the hearing, the Administrator presented the testimony of five witnesses, including two FAA inspectors, and presented thirteen exhibits as evidence in support of her complaint.

---

<sup>3</sup> At the beginning of the hearing, the Administrator amended her complaint by substituting Ohio County Airport for Union County Airport.

Respondent did not testify, but presented two exhibits as evidence. The law judge found that the Administrator's evidence established the allegations, with the exception of paragraph 10(a), set forth in her emergency order of revocation.<sup>4</sup>

Turning to the allegations contained in paragraph 4 of the Administrator's complaint, the record is clear that respondent did not have, during the flights referenced in paragraph 2 of the Administrator's complaint, a written logbook endorsement from a flight instructor authorizing him to conduct solo flights in a helicopter. However, the Administrator's own witness confirmed, as respondent claims, that respondent's flight instructor verbally authorized respondent to conduct solo helicopter flight. We agree with the law judge's finding that a written endorsement was required, and that respondent violated section 61.31(d) in conducting those flights. However, in light of respondent's uncontested reliance on an instructor's advice that a written endorsement was not necessary, we decline to impose sanction for those flights that occurred before April 5. However, on April 5, during an enforcement investigation, FAA inspectors visited respondent and expressly advised him that solo flight in the helicopter was not proper without a

---

<sup>4</sup> The Administrator does not appeal the law judge's finding that she did not prove the allegation pertaining to Airworthiness Directive 95-03-13.

written instructor endorsement. We find that respondent's violation of section 61.31(d) on April 26 was a serious and willful violation.<sup>5</sup>

With regard to paragraph 5 of the Administrator's complaint, respondent contests, as he did in his answer to the Administrator's complaint, the applicability of section 61.56 to his circumstances. The Administrator, we think, does not demonstrate that this regulation was intended to apply to the circumstances of this case, and, therefore, we dismiss that charge.<sup>6</sup>

Turning to the allegation that the helicopter was not airworthy, we must address two issues: (1) whether the

---

<sup>5</sup> The Administrator presented the testimony of a witness who observed respondent operating his helicopter at Ohio County Airport on April 26, and also that of another witness who observed respondent's helicopter at the Ohio County Airport that same day. Respondent, on the other hand, submitted a non-notarized letter from a business associate in Evansville, Indiana, stating that, to the best of the business associate's recollection, respondent was at his place of business in Indiana from approximately 2:30 P.M. to 4:30 P.M., on April 26. Respondent's Exhibit 1. The law judge, in his decision, stated that he found the Administrator's witnesses on this point to be credible, and, after weighing respondent's hearsay exhibit, found that the Administrator proved by a preponderance of the evidence that respondent operated his helicopter on the afternoon of August 26, at Ohio County Airport. We discern no error in this finding.

<sup>6</sup> We reserve decision on this issue for a more complete future record, but, on this record, it is far from clear that the holder of a private pilot certificate must be in compliance with the flight review requirements, necessary in order to exercise the privileges of that certificate, when conducting student operations in a different class of aircraft than those specified on his certificate.

right-side door latch was broken during any of the flights, and (2) whether the helicopter had the required registration documents during the flights. As to the door latch, we think the record does not show that the door latch was, in fact, in an unairworthy condition during any of the flights. One of the Administrator's witnesses, an FAA inspector, testified that the latch was broken during the FAA inspection on April 5.<sup>7</sup> Although we note that pre-hearing letters written by respondent appear to indicate that permanent repairs were still pending at the time of the flight on April 26, there is insufficient proof regarding the unairworthiness of the door latch during the subsequent flight on April 26. In this regard, we note that there was absolutely no testimony or exhibits presented at the hearing regarding the condition of the door latch, or its functionality, during any period after April 5, and, even if it is assumed, *arguendo*, that the latch was in the same condition on April 26 that it was on April 5, the FAA inspector, who testified to the condition of the door latch in general terms, was not qualified at the hearing as an expert on aviation maintenance or airworthiness issues. We

---

<sup>7</sup> This testimony comports with allegations contained in respondent's answer to the complaint and respondent's appeal brief. To the extent that the FAA inspector qualified his testimony by stating that the latch appeared as if it might have already been broken at the time of the April 5 inspection, the record still does not contain evidence regarding the airworthiness status of the door latch during the flights that occurred prior to April 5.

find that the allegations, and the violation of section 91.7(b), specified in paragraph 11 of the Administrator's complaint were not proved.

The record indicates that during the April 5 inspection, FAA inspectors noted and informed respondent that the helicopter's temporary registration paperwork had expired. Although the Administrator did not elicit testimony about when the temporary registration expired, it appears, from a April 10 letter written by respondent to an FAA inspector, that this occurred on March 7. See Administrator's Exhibit 10. The record does not indicate whether the proper registration was obtained prior to flight on April 26. See Id. (respondent claiming that he received the permanent registration on April 6, the day after the FAA inspection). We conclude that, with the exception of the flight on April 26, the Administrator proved the allegations, and the violations of section 91.7(a), specified in paragraph 6 of her complaint.

Notwithstanding our modifications to the law judge's decision, our review of the record, including respondent's 3-page appeal brief, convinces us of the propriety of the sanction of revocation in this case. We base this decision on the following evidence: respondent piloted the helicopter on March 25 with a passenger onboard, despite knowing that, as a student helicopter pilot, he was not authorized to

carry any passengers during solo flight,<sup>8</sup> and, respondent operated his helicopter on April 26 without a written instructor endorsement despite having been expressly informed by representatives of the Administrator on April 5 that operation of the helicopter was not permitted without a written instructor endorsement for solo flight.<sup>9</sup>

Respondent's actions in this regard demonstrate a willful disregard of the FARs, and we have repeatedly upheld revocation where a non-compliance disposition is demonstrated. See, e.g., Administrator v. Bennett, NTSB Order No. EA-4762 at 3 (1999) (finding failure to report DUI convictions to FAA, despite having been put on notice during a previous enforcement case of the requirement to do so, indicative of a non-compliance disposition and grounds for revocation); Administrator v. Basulto, NTSB Order No. EA-

---

<sup>8</sup> Respondent acknowledged in his answer to the complaint that he should not have carried a passenger during his operation of the helicopter. We find, in accordance with the definitions contained in section 61.31(d), that this conduct violated section 61.31(c).

<sup>9</sup> We think this April 26 flight, occurring as it did after being told by FAA inspectors that solo flight on the basis of a verbal endorsement was not authorized, demonstrates, unlike the other flights alleged in paragraph 2 of the Administrator's complaint, a violation of section 61.3(a), not to mention section 61.31(d). Respondent's actions in this regard exhibit not merely an intent to ignore the requirements of section 61.31(d), but an intent to operate the helicopter outside of the regulatory framework that governs pilot certification.

4474 at 10 (1996) (imposing revocation for intentional conduct that demonstrated lack of compliance disposition).<sup>10</sup>

We also note that respondent, who holds a private pilot certificate for fixed-wing single-engine aircraft and has accumulated approximately 2,000 hours of flight time, and is therefore required and expected to be knowledgeable about the generally-applicable provisions contained in parts 61 and 91 of the FARs, nonetheless operated the helicopter on numerous flights without the required registration paperwork, and, on March 13, respondent, by his own admission, operated the helicopter when he did not possess a current medical certificate.<sup>11</sup> Even if, as we assume, these transgressions were inadvertent, they form, when considered in the aggregate with the previously-discussed intentional violations, another independent basis for revocation.<sup>12</sup> See

---

<sup>10</sup> The Administrator's Sanction Guidance Table, admitted as an exhibit during the hearing, specifies a sanction of revocation for carriage of passengers during student operations. See also Administrator v. Scott and Sutter, NTSB Order No. EA-3664 (1992) (upholding revocation of two student pilots for flying together during two practice flights). In addition, the Administrator's guidance specifies a suspension of between 45 and 90 days for each instance of solo flight conducted without required endorsements, and notes that aggravating factors such as deliberate violations justify an upward modification of sanction beyond the range specified in the guidance.

<sup>11</sup> This evidence supports the finding that respondent violated section 61.3(c).

<sup>12</sup> The Administrator's Sanction Guidance Table also specifies a suspension of between 30 and 180 days for operations without a valid medical certificate, and, in addition, it states that "[w]henver multiple violations

Administrator v. McGhee, NTSB Order No. EA-3580 at 4-6

(1992) (affirming determination by law judge that revocation was warranted, even though no individual violation warranted such a severe sanction, because, viewed as a whole, the violations indicate a lack of respect for the FARs).<sup>13</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is granted, in part;
2. The initial decision and the Administrator's Emergency Order of Revocation are modified in accordance with this opinion and order; and
3. The Administrator's revocation of respondent's private pilot certificate is affirmed.

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

---

demonstrate a lack of qualifications, a remedial sanction such as revocation . . . is appropriate."

<sup>13</sup> Respondent, in his appeal brief, also argues that there was no proof that his operation of the helicopter was careless or reckless. However, aside from our view that the proved violations demonstrate an independent violation of section 91.13(a), the Administrator argued that the section 91.13(a) charge was a residual violation. See, e.g., Administrator v. Mardirosian, 7 NTSB 561, 563 (1990), aff'd 962 F.2d 14 (9th Cir. 1992).

**Appendix A**

FAR sections 61.3, 61.31, and 61.56 (14 C.F.R. Part 61), and FAR sections 91.7 and 91.13 (14 C.F.R. Part 91), provide, in relevant part, as follows:

**§ 61.3 Requirement for certificates, ratings and authorizations.**

(a) *Pilot certificate.* A person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry, unless that person has a valid pilot certificate or special purpose pilot authorization issued under this part in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization....

\* \* \* \* \*

(c) *Medical certificate.* (1) Except as provided for in paragraph (c)(2) of this section, a person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft, under a certificate issued to that person under this part, unless that person has a current and appropriate medical certificate that has been issued under part 67 of this chapter, or other documentation acceptable to the Administrator, which is in that person's physical possession or readily accessible in the aircraft.

\* \* \* \* \*

**§ 61.31 Type rating requirements, additional training, and authorization requirements.**

\* \* \* \* \*

(c) *Aircraft category, class, and type ratings: Limitations on the carriage of persons, or operating for compensation or hire.* Unless a person holds a category, class, and type rating (if a class and type rating is required) that applies to the aircraft, that person may not act as pilot in command of an aircraft that is carrying another person, or is operated for

compensation or hire. That person may not act as pilot in command of that aircraft for compensation or hire.

(d) *Aircraft category, class, and type ratings: Limitations on operating an aircraft as the pilot in command.* To serve as the pilot in command of an aircraft, a person must--

(1) Hold the appropriate category, class, and type rating (if a class rating and type rating are required) for the aircraft to be flown;

(2) Be receiving training for the purpose of obtaining an additional pilot certificate and rating that are appropriate to that aircraft, and be under the supervision of an authorized instructor; or

(3) Have received training required by this part that is appropriate to the aircraft category, class, and type rating (if a class or type rating is required) for the aircraft to be flown, and have received the required endorsements from an instructor who is authorized to provide the required endorsements for solo flight in that aircraft.

\* \* \* \* \*

**§ 61.56 Flight review.**

\* \* \* \* \*

(c) Except as provided in paragraph (d), (e), and (g) of this section, no person may act as pilot in command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that person acts as pilot in command, that person has--

(1) Accomplished a flight review given in an aircraft for which that person is rated by an authorized instructor[]

\* \* \* \* \*

**§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in a condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

**§ 91.13 Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

\* \* \* \* \*