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NTSB Order No. EA-4980

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 13th day of June, 2002

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JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-16138
	v.)	
)	
GARY ALAN BIELSTEIN)	
)	
	Respondent.)	
)	
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OPINION AND ORDER

Respondent appeals the written initial decision of Administrative Law Judge William A. Pope, II, issued on September 21, 2001, after an evidentiary hearing.¹ By that decision, the law judge affirmed the Administrator's emergency

¹ The law judge's initial decision is attached.

order revoking² all certificates held by respondent, including his Airframe and Powerplant (A&P) mechanic certificate with Inspection Authorization (IA) and his Commercial Pilot Certificate, for violations of Federal Aviation Regulation ("FAR") sections 43.5(a), 43.9(a)(1), 43.12(a)(1), 43.13(a), 43.13(b), and 43.15(a)(1), and Appendix D to Part 43.³ We deny the appeal.

The Administrator's complaint alleged the FAR violations occurred in the course of three inspections: an annual inspection of N5205W, a Piper PA-28-160 Cherokee; a 100-hour inspection of N83947, a Piper PA-28-181 Archer; and a 100-hour inspection of N12867, a Cessna C-172M Skyhawk. The Complaint alleges that, at the time respondent completed each inspection, discrepancies existed on each aircraft that rendered them unairworthy.⁴ In addition to the Administrator's general claim

² Respondent waived the accelerated procedures applicable to emergency revocation proceedings.

³ The relevant provisions of FAR sections 43.5, 43.9, 43.12, 43.13, 43.15, and Appendix D to Part 43 are set forth in Appendix A to this Opinion and Order.

⁴ Specifically, Count One alleges that N5205W exhibited an unapproved part (a stabilator trim trunnion) that respondent knew had been installed in the course of inspection-related maintenance, an automotive part instead of the proper stabilator trim control handle, crush damage to the firewall immediately behind the nose landing gear, an unauthorized pop-riveted patch on the left aileron trailing edge, a "doubler plate" covering the outboard aileron hinge attachment hardware, two large unauthorized sheet metal skin patches on the rudder, and many wing and control surface rivet heads that exhibited

that the discrepancies demonstrated respondent's general lack of technical qualification, each count also alleges that respondent's logbook airworthiness certification was fraudulent or intentionally false.⁵ Finally, in what we view as the most serious charge, the Administrator alleges that respondent also intentionally or fraudulently falsified the airworthiness certification for N5205W in that he knew an unairworthy part, an inappropriately-fabricated stabilator trim trunnion, was installed in the course of inspection-related maintenance.⁶

impermissible damage from a previous sanding. Count Two alleges that N83947 exhibited "excessive signs of working and looseness" of the vertical stabilizer aft spar lower attachment rivets, a crack containing corrosion in the bottom of the aft vertical fin skin, several fasteners and nutplates missing from the tailcone assembly, and several pieces of the tailcone itself broken and missing. Count Three alleges that N12867 exhibited a right wing outboard leading edge that was "wrinkled, dented, and damaged," and corresponding corrosion of the skin surface and damaged area.

⁵ The fraudulent or intentional falsification charges in each Count that stem from respondent's inspection sign-off are based on only some of the alleged discrepancies. Specifically, in Count One, pertaining to N5205W, the Administrator contends, inferentially, at least, that respondent knew that the aircraft had an unapproved part installed; in Count Two, pertaining to N83947, the Administrator contends that respondent knew of the aircraft's "excessive signs of working and looseness" of the vertical stabilizer aft spar lower attachment rivets; and, in Count Three, pertaining to N12867, the Administrator contends that respondent knew that the aircraft's right wing outboard leading edge was "wrinkled, dented, and damaged," and exhibited corresponding corrosion of the skin surface and damaged area.

⁶ Respondent's related logbook entry, describing the maintenance performed in the course of the inspection, stated, in relevant part:

The evidence from the hearing is set forth in detail in the law judge's initial decision. In brief, however, the Administrator presented expert testimony that the aircraft were unairworthy, and even respondent's expert was not unequivocal as to several of the alleged discrepancies. Moreover, there was conflicting testimony about some of the factual allegations, and the law judge made credibility findings against respondent's version of events. In addition, it is useful for our discussion of the allegations pertaining to the newly-created trunnion installed on N5205W to elaborate on some of the relevant evidence presented. The owner of N5205W, John Fabbro, held an A&P mechanic certificate and performed much of the maintenance work associated with the annual inspection. At some point during the inspection, respondent concluded that the stabilator trim trunnion needed to be replaced. After unsuccessful attempts to obtain this trunnion from the manufacturer and parts distributors (it was no longer produced or available), and after

REMOVED STABILATOR TRIM JACKSCREW ASSEMBLY,
CLEAN[E]D, LUBED AND REINSTALLED, STABILATOR
TRIM RIGGING CHECK SATISFACTORY PER PIPER
CHEROKEE SERVICE MANUAL, CHAPTER 2 PARA 5-
23....

Exhibit ("Ex.") A-4. The Administrator also alleges that this entry was also intentionally false, in violation of FAR section 43.12(a)(1), because no mention is made that the original trunnion -- a subcomponent of the stabilator trim jackscrew assembly -- was removed and replaced with an apocryphal trunnion fabricated by a local machinist.

exploring the idea of a salvaged stabilator trim trunnion (which was deemed ill-advised), respondent suggested to Fabbro that a local machinist and pilot might be able to reproduce the trunnion. Respondent, with Fabbro's concurrence, provided the original trunnion to the machinist, and the machinist subsequently created a new trunnion using the removed part as an exemplar. Respondent did not know what material the original trunnion was comprised of, and the machinist testified at the hearing that he utilized the best-grade aluminum he had. Fabbro installed the newly-created trunnion on the aircraft, and, subsequently, before completing the aircraft logbook entries necessitated by the inspection, respondent, on September 29, 2000, orally indicated to Fabbro that the inspection was complete and that the aircraft was airworthy. Over the next several days, Fabbro flew the aircraft numerous times, but, ultimately, respondent and Fabbro both became aware that the FAA was interested in whether an unapproved part (i.e., the trunnion) had been installed on the aircraft. On October 12, respondent completed the aircraft logbook entries pertaining to the inspection, including the descriptions of the associated maintenance, after Fabbro, in consultation with respondent regarding the FAA's investigation, removed the machinist-fabricated trunnion and re-installed the previously-removed original part.

In his initial decision, the law judge concluded that the evidence supported the charge that respondent violated FAR sections 43.5(a), 43.13(a), 43.13(b), and 43.15(a)(1) by certifying that N5205W and N83947 were airworthy when the discrepancies listed in the Administrator's complaint existed at the time of his certification. In making these determinations, the law judge credited the testimony by the Administrator's expert witness that the discrepancies rendered the aircraft unairworthy, and he also noted that even respondent's expert witness equivocated in his judgment of respondent's evaluation of some of the cited discrepancies. The law judge, however, also found that respondent's actions in this regard were attributable to a lack of competence and, therefore, that the Administrator had not proved that respondent's airworthiness certifications, in this regard, were fraudulently or intentionally false. The law judge dismissed the allegations pertaining to N12867 because evidence was presented at the hearing that, contrary to the Administrator's expert's opinion, the alleged discrepancy affecting the right wing was assessed by another FAA inspector and found to be airworthy.⁷

Regarding the trunnion on N5205W, the law judge found, after assessing the conflicting testimony and making credibility

⁷ The Administrator does not appeal this, or any other, aspect of the law judge's decision.

determinations against respondent, that respondent violated FAR sections 43.13(a) and 43.15(a)(1). The law judge also concluded that respondent's entry regarding removal of the jackscrew assembly (which omitted reference to the trunnion itself) violated FAR sections 43.5(a) and 43.9(a)(1) "because [it] contained a material omission." In making this determination, the law judge noted that the logbook entries did not indicate that the original trunnion had been removed, that another locally-created trunnion had been installed and subsequently removed, and that the original trunnion had then been re-installed. The law judge also concluded that even though Fabbro may have performed the actual work, it was done in connection with an annual inspection for which respondent had sole responsibility. Finally, the law judge determined that the evidence demonstrated that respondent knew the machinist-fabricated trunnion installed in lieu of the original trunnion was not airworthy "because it was not an approved part conforming to the aircraft's type design, supported by approved data" and, accordingly, concluded that, on this basis, respondent's September 29 certification that N5205W was airworthy violated FAR section 43.12(a)(1).

On appeal, respondent argues that the machinist-fabricated trunnion was a legitimate owner-produced part and, therefore, that the law judge erred in determining that this trunnion

rendered the aircraft unairworthy and that respondent intentionally falsified the logbook entry certifying that the aircraft was airworthy. Respondent also argues that the law judge erred in placing upon him "sole responsibility" to log maintenance (specifically, installation of the machinist-fabricated trunnion) performed by Fabbro, an A&P mechanic, in connection with the inspection of N5205W.⁸ The Administrator urges us to uphold the law judge's initial decision.

⁸ Respondent also argues, essentially, that he made a good-faith, professional judgment that, notwithstanding the conditions cited by the Administrator (see footnote 5, supra), the aircraft were airworthy, and that the law judge erred because the Administrator did not prove that the aircraft were unairworthy. Upon consideration of respondent's arguments, however, including those pertaining to the requirements and applicability of the provisions of Part 21 referenced by the law judge, we find no basis to disturb either the law judge's credibility-based resolution of conflicting testimony or his assessment of the expert testimony and evidence. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1987), and cases cited there (resolution of credibility issues, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge); see also Hearing Transcript at 300-460 (testimony of FAA inspector Dodge). Respondent also argues, in the alternative, that even if there were regulatory transgressions committed in the course of his inspection, they wouldn't warrant revocation of all of his certificates. We need not reach this issue, however, for respondent's violation of FAR section 43.12(a)(1) is ample basis for revocation of all of his FAA certificates. See, e.g., Administrator v. Nunes, et. al., NTSB Order No. EA-4567 at 13-14 (1997) ("FAR § 43.12(a)(1) 'is concerned with insuring the truthfulness or accuracy of written information about an aircraft's maintenance history.' If aircraft records cannot be relied on as accurate, the viability of the entire aircraft maintenance system is doubtful. Moreover, the necessity for truthfulness and the critical need for accuracy in these records is reflected clearly in our precedent, where we have consistently affirmed revocation as the

At the outset, we observe that the relevant date for evaluating the condition of N5205W in the context of the Administrator's allegations is September 29, the date referenced in respondent's logbook entries and airworthiness certification.⁹ On that date, the evidence is clear, respondent effectively returned the aircraft to service with the newly-created trunnion installed on the aircraft, and he indicated to Fabbro that the aircraft was airworthy.

We address, first, the law judge's determinations regarding the violations associated with the machinist-fabricated trunnion. The law judge rationalized that even if the machinist-fabricated trunnion "otherwise qualified as an owner-produced part under [FAR] section 21.303(b)(2), it was not an airworthy part" because (citing FAR sections 21.33(b)(2) and 21.31(b)) "even an owner-produced part must meet the requirements of the aircraft's type design."¹⁰ Although we do

only appropriate sanction in similar circumstances.") (quoting, in part, from Administrator v. Anderson, NTSB Order No. EA-4564 at p. 6, n.7 (1997); see also Administrator v. Cody, NTSB Order No. EA-3714 at 3 (1992) (revocation of airman certificates for an intentionally false statement made upon an application for a medical certificate).

⁹ See, e.g., Administrator v. Rice, 5 NTSB 2285, 2290 (1987) ("date specified in the entry must be the date the inspector concluded the examination of the aircraft" and "this does not mean that the entry must be logged on that date").

¹⁰ The law judge further found that respondent also violated FAR section 43.12(a)(1) "by making a maintenance entry in the logbook ... that omitted any reference to the replacement of the

not question the law judge's evaluation of respondent's affirmative defense that he thought the machinist-created trunnion was a legitimate owner-produced part, or the law judge's credibility findings against respondent,¹¹ we nonetheless must evaluate this analysis in light of the law judge's conclusion that respondent, who knew the machinist-fabricated trunnion was installed as of September 29, intentionally falsely certified that the aircraft was airworthy on that date. The required elements of an intentional falsification charge are a false representation, in reference to a material fact, with knowledge of its falsity. Where circumstantial evidence is relied upon to demonstrate knowledge of falsity, it must be so compelling that no other determination is reasonably possible. Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976); Administrator v. Hart, 2 NTSB 24, 26 (1977). We think the circumstantial evidence supports the law judge's conclusion that respondent knew the newly-created trunnion was unairworthy, and, therefore, that his certification that N5205W was airworthy was knowingly

original stabilator trim trunnion[.]” We agree, for respondent's selective description of the maintenance performed clearly coincides with his efforts to conceal the fact that another trunnion was installed. Compare Administrator v. Alvarez, et. al., 5 NTSB 1906, 1907 (1987) (failure to make any entry is not a violation of 43.12(a)(1) notwithstanding the fact that the entry was required).

¹¹ See, e.g., Smith, supra.

false. As the law judge observed after making credibility determinations against respondent, respondent lied to FAA inspectors about the installation of the machinist-fabricated trunnion, no logbook entry referenced the machinist-fabricated trunnion, and respondent subsequently arranged to have Fabbro remove the machinist-fabricated trunnion and reinstall the original trunnion (again, without any logbook entries) before making the backdated logbook maintenance entries and airworthiness certification. As for the other elements of an intentional falsification charge, the Administrator's expert's testimony about the requirements of Part 21, and, in particular the applicability of the requirement that parts conform to type design specifications -- including "information on dimensions, materials, and processes necessary to define the structural strength of the product" -- established that the machinist-fabricated trunnion was not an airworthy part. And, obviously, the installation of any unairworthy part is material to an airworthiness certification, just as it is material to those who must rely upon the accuracy of maintenance records to ensure safety of flight.

The evidence also clearly supports the law judge's determination that the Administrator proved violations of FAR sections 43.5(a), 43.9(a)(1), 43.13(b), and 43.15(a)(1) associated with the trunnion. The record indicates that

respondent was integral to the inspection-related decision to replace the original trunnion with another that he arranged to have fabricated by the local machinist, and the installation of the machinist-fabricated trunnion was performed in the course of maintenance related to his inspection and with his full knowledge and consent. Under these circumstances, and regardless of any record-keeping responsibilities abdicated by Fabbro (the A&P mechanic who actually installed the part), we do not hesitate to conclude that respondent (who completed all of the maintenance descriptions related to the inspection) is culpable for the charged aspects of both the improper inspection and the associated inspection-related maintenance. See also Administrator v. Scott, NTSB Order No. EA-4030 at 7 (1993) (“inspections are a form of maintenance which are subject to the performance rules in section 43.13”) (citation omitted).

In sum, we discern no error by the law judge and we affirm his decision upholding the Administrator’s Order of Revocation.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed; and
3. The Administrator's Order of Revocation is affirmed.

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

Appendix A

FAR sections 43.5, 43.9, 43.12, 43.13, 43.15, and Appendix D to Part 43, 14 C.F.R. Part 43, provide, in relevant part, as follows:

Sec. 43.5 -- Approval for return to service after maintenance, preventive maintenance, rebuilding, or alteration.

No person may approve for return to service any aircraft, airframe, aircraft engine, propeller, or appliance, that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless --

- (a) The maintenance record entry required by § 43.9 or § 43.11, as appropriate, has been made;

* * * * *

Sec. 43.9 -- Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records (except inspections performed in accordance with part 91, part 123, part 125, § 135.411(a)(1), and § 135.419 of this chapter).

- (a) *Maintenance record entries.* Except as provided in paragraphs (b) and (c) of this section, each person who maintains, performs preventive maintenance, rebuilds, or alters an aircraft, airframe, aircraft engine, propeller, appliance, or component part shall make an entry in the maintenance record of that equipment containing the following information:
- (1) A description (or reference to data acceptable to the Administrator) of work performed.
 - (2) The date of completion of the work performed.
 - (3) The name of the person performing the work if other than the person specified in paragraph (a)(4) of this section.
 - (4) If the work performed on the aircraft, airframe, aircraft engine, propeller, appliance, or component

part has been performed satisfactorily, the signature, certificate number, and kind of certificate held by the person approving the work. The signature constitutes the approval for return to service only for the work performed. In addition to the entry required by this paragraph, major repairs and major alterations shall be entered on a form, and the form disposed of, in the manner prescribed in appendix B, by the person performing the work.

* * * * *

Sec. 43.12 -- Maintenance records: Falsification, reproduction, or alteration.

- (a) No person may make or cause to be made:
 - (1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part;
 - (2) Any reproduction, for fraudulent purpose, of any record or report under this part; or
 - (3) Any alteration, for fraudulent purpose, of any record or report under this part.

* * * * *

Sec. 43.13 Performance rules (general).

- (a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment

or apparatus or its equivalent acceptable to the Administrator.

- (b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

* * * * *

Sec. 43.15 -- Additional performance rules for inspections.

- (a) *General.* Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall --
 - (1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements; []

* * * * *

Appendix D to Part 43 -- Scope and Detail of Items (as Applicable to the Particular Aircraft) To Be Included in Annual and 100-Hour Inspections

- (a) Each person performing an annual or 100-hour inspection shall, before that inspection, remove or open all necessary inspection plates, access doors, fairing, and cowling. He shall thoroughly clean the aircraft and aircraft engine.
- (b) Each person performing an annual or 100-hour inspection shall inspect (where applicable) the following components of the fuselage and hull group:
 - (1) Fabric and skin -- for deterioration, distortion, other evidence of failure, and defective or insecure attachment of fittings.
 - (2) Systems and components -- for improper installation, apparent defects, and unsatisfactory operation.

- (3) Envelope, gas bags, ballast tanks, and related parts -
- for poor condition.

- (c) Each person performing an annual or 100-hour inspection shall inspect (where applicable) the following components of the cabin and cockpit group:
 - (1) Generally -- for uncleanliness and loose equipment that might foul the controls.
 - (2) Seats and safety belts -- for poor condition and apparent defects.
 - (3) Windows and windshields -- for deterioration and breakage.
 - (4) Instruments -- for poor condition, mounting, marking, and (where practicable) improper operation.
 - (5) Flight and engine controls -- for improper installation and improper operation.
 - (6) Batteries -- for improper installation and improper charge.
 - (7) All systems -- for improper installation, poor general condition, apparent and obvious defects, and insecurity of attachment.

- (d) Each person performing an annual or 100-hour inspection shall inspect (where applicable) components of the engine and nacelle group as follows:
 - (1) Engine section -- for visual evidence of excessive oil, fuel, or hydraulic leaks, and sources of such leaks.
 - (2) Studs and nuts -- for improper torquing and obvious defects.
 - (3) Internal engine -- for cylinder compression and for metal particles or foreign matter on screens and sump drain plugs. If there is weak cylinder compression, for improper internal condition and improper internal tolerances.

- (4) Engine mount -- for cracks, looseness of mounting, and looseness of engine to mount.
 - (5) Flexible vibration dampeners -- for poor condition and deterioration.
 - (6) Engine controls -- for defects, improper travel, and improper safetying.
 - (7) Lines, hoses, and clamps -- for leaks, improper condition and looseness.
 - (8) Exhaust stacks -- for cracks, defects, and improper attachment.
 - (9) Accessories -- for apparent defects in security of mounting.
 - (10) All systems -- for improper installation, poor general condition, defects, and insecure attachment.
 - (11) Cowling -- for cracks, and defects.
- (e) Each person performing an annual or 100-hour inspection shall inspect (where applicable) the following components of the landing gear group:
- (1) All units -- for poor condition and insecurity of attachment.
 - (2) Shock absorbing devices -- for improper oleo fluid level.
 - (3) Linkages, trusses, and members -- for undue or excessive wear fatigue, and distortion.
 - (4) Retracting and locking mechanism -- for improper operation.
 - (5) Hydraulic lines -- for leakage.
 - (6) Electrical system -- for chafing and improper operation of switches.
 - (7) Wheels -- for cracks, defects, and condition of bearings.

- (8) Tires -- for wear and cuts.
- (9) Brakes -- for improper adjustment.
- (10) Floats and skis -- for insecure attachment and obvious or apparent defects.
- (f) Each person performing an annual or 100-hour inspection shall inspect (where applicable) all components of the wing and center section assembly for poor general condition, fabric or skin deterioration, distortion, evidence of failure, and insecurity of attachment.
- (g) Each person performing an annual or 100-hour inspection shall inspect (where applicable) all components and systems that make up the complete empennage assembly for poor general condition, fabric or skin deterioration, distortion, evidence of failure, insecure attachment, improper component installation, and improper component operation.
- (h) Each person performing an annual or 100-hour inspection shall inspect (where applicable) the following components of the propeller group:
 - (1) Propeller assembly -- for cracks, nicks, binds, and oil leakage.
 - (2) Bolts -- for improper torquing and lack of safetying.
 - (3) Anti-icing devices -- for improper operations and obvious defects.
 - (4) Control mechanisms -- for improper operation, insecure mounting, and restricted travel.

* * * * *

- (j) Each person performing an annual or 100-hour inspection shall inspect (where applicable) each installed miscellaneous item that is not otherwise covered by this listing for improper installation and improper operation.