

SERVED: December 22, 2014

NTSB Order No. EA-5735

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 18th day of December, 2014

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19573
v.)	
)	
PAUL M. GUNDERSEN,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent, who proceeds *pro se*, appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued February 26, 2014.¹ By that decision, the law judge determined respondent violated 14 C.F.R. §§ 43.13(a)² and 43.15(a)(1)³ by performing

¹ A copy of the initial decision, an excerpt from the hearing transcript, is attached.

² Section 43.13(a) provides as follows:

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and

maintenance on civil aircraft N5949U, a Piper PA28-140, in a manner inconsistent with the applicable manufacturer requirements. The law judge affirmed the Administrator's suspension of respondent's mechanic certificate with airframe and powerplant (A&P) rating and inspection authorization (IA) for a period of 135 days. We deny respondent's appeal.

A. Facts

On February 11, 2013, at the request of the owner of N5949U, respondent performed an annual inspection on the aircraft, and performed maintenance on the carburetor. After completing the annual inspection and maintenance, respondent signed an entry in N5949U's engine logbook detailing the maintenance performed, indicating he performed an annual inspection, and certifying the aircraft as airworthy. Respondent parked N5949U on the public ramp at Henderson Executive Airport (KHND) in Henderson, Nevada.

Approximately two weeks after respondent signed off the work on N5949U, the aircraft's owner returned to the aircraft. Upon starting the engine, the owner discovered the engine revolutions per minute (RPMs) were at approximately 1,400 RPM even when the throttle lever was at its lowest setting. According to the aircraft's maintenance manual, the engine should idle

(.continued)

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.

³ Section 43.15(a)(1) provides as follows:

(a) General. Each person performing an inspection required by part 91, 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.

between 550 and 650 RPM.⁴ The owner filed a complaint with the Federal Aviation Administration (FAA). During the subsequent investigation, Aviation Safety Inspector James Brownell discovered the idle screw on the newly installed carburetor was improperly set, and also discovered the newly installed emergency locator transmitter (ELT) had the wrong placard.

Based on allegations respondent failed to properly set the carburetor idle speed and improperly placarded the new ELT in N5949U, the Administrator, on October 21, 2013, issued an order suspending respondent's mechanic certificate with A&P rating and IA for a 135-day period. Respondent appealed the order.

Prior to the hearing, on January 14, 2014, respondent filed a motion to dismiss claiming the Administrator failed to provide him with releasable portions of the enforcement investigative report (EIR),⁵ and, because he had satisfactorily completed a reexamination pursuant to 49 U.S.C. § 44709(a), the Administrator could not pursue enforcement action against him. Following briefing, the law judge found the evidence did not support respondent's claim the Administrator failed to provide the releasable portions of the EIR, and further found 49 U.S.C. § 44709 gave the FAA authority to require reexamination and take enforcement action separately and simultaneously. Accordingly, the law judge denied the motion, and the case proceeded to

⁴ Exh. A-8 at 12, ¶ 8-30(b) (Piper Service Manual).

⁵ Respondent's argument concerning the EIR is based on a procedural rule codified in the Board's Rules of Practice:

[W]here the respondent requests the EIR and the Administrator fails to provide the releasable portion of the EIR to the respondent by the time he or she serves the complaint on the respondent, the respondent may move to dismiss the complaint or for other relief and, unless the Administrator establishes good cause for that failure, the law judge shall order such relief as he or she deems appropriate, after considering the parties' arguments.

49 C.F.R. § 821.19(d)(1).

hearing.

B. Law Judge's Oral Initial Decision

At the beginning of the hearing, the law judge noted respondent, in his answer, admitted paragraphs 1-4, 6,⁶ 7, and 8b of the complaint. Of note, among respondent's admissions were allegation 6, which stated, "[w]hen you replaced the [ELT], you installed the placard for a different model [ELT]" and allegation 8b, which stated, "at the time you approved N5949U for return to service, the following conditions existed on the aircraft...the [ELT] was labeled with the wrong placard." Because respondent admitted to paragraphs 6 and 8b of the complaint, relating to installation and inspection of the improper ELT placard, and proposes no affirmative defense that his violation was somehow justified, we affirm the law judge's determination respondent violated 14 C.F.R. §§ 43.13(a) and 43.15(a)(1) as to the ELT placard without further analysis.

At the conclusion of the hearing, the law judge found respondent violated 14 C.F.R. §§ 43.13(a) and 43.15(a)(1) by failing to properly perform maintenance and to inspect N5949U to determine if the aircraft met all its applicable airworthiness requirements. The law judge rejected respondent's theory that someone tampered with the newly installed carburetor on N5949U between when he signed off on his work and the owner inspected it two weeks later. In this regard, the law judge stated, "[t]here is no evidence that any person tampered with the aircraft...It is really very unlikely, at best, that some unknown individual would certainly go out to Henderson Airport, go out on the ramp, pick the [r]espondent's aircraft at random and reset the

⁶ Paragraph 6 of the complaint mistakenly was labeled as a second paragraph 5.

carburetor screw.”⁷ Overall, the law judge concluded the Administrator’s evidence was more credible than respondent’s. As a result, the law judge affirmed the Administrator’s order and suspended respondent’s certificate for a period of 135 days.

C. Issues on Appeal

Respondent raises several issues on appeal. First, he asserts the improper idle setting resulted from third party tampering. Next, he claims the Administrator failed to properly provide him with the releasable portions of the EIR. Finally, he argues the Administrator is barred from bringing this enforcement action against him because he already completed a reexamination pursuant to 49 U.S.C. § 44709(a); in this regard, he bases his argument on his contention that FAA staff informed him in a letter he would not be subject to enforcement action if he completed a reexamination.

2. Decision

On appeal, we review the law judge’s decision *de novo*, as our precedent requires.⁸

A. Improper Idle Setting and Third Party Tampering

In cases in which a party challenges a law judge’s credibility finding, we defer to the credibility findings of our law judges in the absence of a showing such findings are arbitrary and capricious.⁹ We find the law judge’s determinations in this case were not arbitrary and

⁷ Initial Decision at 88.

⁸ Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge’s findings).

⁹ Administrator v. Porco, NTSB Order No. EA-5591 at 13-20 (2011), aff’d, Porco v. Huerta, 472 Fed.Appx. 2 (D.C. Cir. 2012) (per curiam).

capricious. At the outset, we note the parties do not dispute the idle setting was incorrect at the time the aircraft's owner first started the engine after respondent completed his work on the aircraft. We agree with the law judge's finding; respondent's theory that someone tampered with the aircraft while it was on the ramp is incredible. Furthermore, the record before us is devoid of any evidence of such tampering.

At the hearing, respondent's theory was some unknown person accessed the aircraft after respondent completed his work and parked it in the public tie-down area at KHND. On appeal, respondent alleges the aircraft owner complained to the FAA as retaliation after a dispute with respondent over his bill and may have tampered with the aircraft himself. Respondent offers no evidence to support his theory of tampering, whether by the aircraft's owner or some other third party, other than his own suppositions. Respondent also fails to prove any connection between an alleged bill dispute and his theory the owner tampered with the aircraft himself. The law judge made a credibility finding adverse to respondent. We find no basis in the record to disturb the law judge's conclusions in this regard.

B. Releasable Portions of the EIR

Section 821.19(d) of the Board's Rules of Practice requires the Administrator to provide the releasable portion of the EIR to the respondent upon the respondent's request.

During the parties' briefing on respondent's motion to dismiss, the law judge considered an affidavit of Agnes Ebilane, the FAA employee who sent the releasable portions of the EIR to respondent on or about August 28, 2013. Respondent acknowledges receiving the FAA's letter, and also being told during the informal conference he had been sent the releasable portions of the

EIR.¹⁰

After weighing the evidence, the law judge determined the Administrator had complied with the requirement to provide respondent with the releasable portions of the EIR. While the Administrator concedes some information was provided to respondent in an untimely manner, it is unclear from the record what information respondent believes he was entitled to receive but did not. Furthermore, respondent has not articulated any prejudice he suffered as a result of the law judge's ruling in this regard.¹¹

C. Effect of Reexamination

Finally, respondent asserts he successfully completed a reexamination pursuant to 49 U.S.C. § 44709(a), and argues the FAA is now barred from taking enforcement action against him. We disagree.

As the law judge explained in his order dismissing respondent's motion, 49 U.S.C. § 44709 authorizes the Administrator to take two independent actions related to an airman's certificates—49 U.S.C. § 44709(a) grants the Administrator authority to reexamine an airman's holding a certificate, while 49 U.S.C. § 44709(b)(1)(A) grants the Administrator authority to take enforcement action. The plain language of the statute clearly envisions the Administrator could pursue both a reexamination and suspension action, stating:

(b) The Administrator may issue an order amending, modifying, suspending, or revoking—

¹⁰ “Respondent asked Compliant [sic] verbally during the Telephonic conference where the complete report was and was told by Compliant that what was sent to me was all the information that was available.” Mot. to Dismiss at 3.

¹¹ See generally Administrator v. Walker, NTSB Order No. EA-5656 at 15n.39 (2013).

- (1) any part of a certificate issued under this chapter if—
- (A) the Administrator decides *after conducting* a reinspection, *reexamination*, or other investigation that safety in air commerce or air transportation and the public interest require that action.¹²

We find these provisions are not mutually exclusive and the Administrator may pursue both actions simultaneously or consecutively.¹³

To the extent respondent argues correspondence from Inspector Brownell indicated a reexamination would dispose of any potential enforcement action, we disagree. In his motion to dismiss filed with the law judge, respondent attached a copy of Inspector Brownell's June 18, 2013 letter requiring respondent submit to a reexamination. On the second page of the letter, Inspector Brownell specifically wrote, "[i]f additional enforcement action is to be taken, you will be advised in a separate letter." Thus, the letter did not state the Administrator waived the authority to pursue an action against respondent's mechanic certificate; instead, it indicated any enforcement action the Administrator might choose to pursue would be done in a separate action. We find the law judge did not err in determining the Administrator may pursue reexamination in conjunction with an enforcement action.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's decision is affirmed; and

¹² 49 U.S.C. § 44709(b)(1)(A) (emphasis added).

¹³ See generally Administrator v. Leaschauer, NTSB Order No. EA-5723 (2014).

3. The Administrator's order suspending respondent's mechanic certificate with A&P ratings and IA is affirmed.¹⁴

HART, Acting Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

¹⁴ For the purpose of this order, respondent must physically surrender his certificates to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *

In the matter of:

MICHAEL P. HUERTA,
ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

PAUL M. GUNDERSEN,

Respondent.

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* Docket No.: SE-19573
* JUDGE GERAGHTY
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Foley Federal Building
300 Las Vegas Boulevard
Las Vegas, Nevada

Wednesday,
February 26, 2014

The above-entitled matter came on for hearing,
pursuant to Notice, at 9:30 a.m.

BEFORE: PATRICK G. GERAGHTY
Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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On behalf of the Respondent:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE GERAGHTY: This has been a proceeding before the National Transportation Safety Board on the Appeal of Paul M. Gundersen, hereinafter Respondent, from an Order of Suspension which seeks to suspend both his Mechanic's certificate with Airframe and Powerplant Ratings and his Inspection Authorization for a period of 135 days. The Order of Suspension serves herein as the Complaint, and was issued on behalf of the Administrator, Federal Aviation Administration, herein the Complainant.

The matter has been heard before this Judge, and as provided by the Board's Rules of Practice, I am issuing a Bench Decision in the proceeding.

Pursuant to Notice, this matter came on for trial on February 26, 2014, in Las Vegas, Nevada. The Complainant was represented by one of his Staff Counsel, Theodore P. Byrne, Esquire, of the Western Pacific Region, Federal Aviation Administration. The Respondent was present at all times and was represented by his Counsel, Mr. Robert Rourke, Esquire, of Las Vegas, Nevada.

I have considered all of the evidence offered in this proceeding, both oral and documentary, and when I review the

1 evidence I simply summarize and highlight. Evidence which I don't
2 specifically mention is viewed by me as being essentially
3 corroborative or not materially affecting the outcome of the
4 Decision.

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AGREEMENTS

By pleading, it was agreed there was no dispute as to the following Paragraph allegations stated in the Complaint: Paragraphs 1 through 4, Paragraph 5, Paragraph 7, and Paragraph 8(b). Those matters having been admitted, they are taken as having been established for purposes of this Decision.

DISCUSSION

As noted, the Complainant seeks a suspension of the Respondent's Certificates for a period of 135 days. That is predicated upon the allegation that on the facts alleged in the Order of Suspension, the Complaint, that they show that the Respondent has acted in regulatory violation of the provisions of Sections 43.13(a) and 43.15(a)(1) of the Federal Aviation Regulations. The specific provisions as applicable herein I will refer to subsequently as appropriate.

Complainant's case is made through the testimony of several witnesses and 10 exhibits which were offered and received in evidence.

The first witness was Mrs. Theresa McNish. She is a Student Pilot. She is familiar with the aircraft in question as identified in Paragraph 2 of the Complaint, and apparently is at

1 least part owner, if not the entire owner, as shown on Exhibit
2 A-1, the Aircraft Registry with the Federal Aviation
3 Administration. She testified that the aircraft had been given to
4 the Respondent for the performance of an annual inspection and
5 that specifically the Respondent was to work on the carburetor,
6 and in fact as admitted in the response by the Respondent, he in
7 fact installed the carburetor on this aircraft as part of his work
8 on the aircraft. Mrs. McNish also testified that the aircraft
9 logbooks, which are received as Exhibits A-4 and 5, were returned
10 to her as showing endorsed by the Respondent. And in fact Exhibit
11 A-4, a copy of the engine logbook, does have a sign-off by the
12 Respondent returning this aircraft to service.

13 Lastly, Mrs. McNish indicated and it was not disputed as
14 to how she knew this, but she testified that when the aircraft had
15 been returned to her and her husband, Mr. Colin McNish, that the
16 carburetor had been set so that the idle speed was 1,400 RPM.

17 There was no cross-examination.

18 Mr. Colin McNish also testified he is familiar with the
19 aircraft. He stated he inspected the aircraft after the aircraft
20 had been returned to him and to his wife as being returned for
21 service by the Respondent. On his testimony, he went out to the
22 aircraft only once after that occasion. He went out to try to
23 start the aircraft for the purpose of flying it back from the
24 airport in Henderson, Nevada, which is where Respondent had worked
25 on the aircraft, to Mr. McNish's base of operation, Boulder City,

1 Nevada. Mr. McNish testified that he, after inspection following
2 the checklist, that he started the aircraft and noticed that the
3 RPM was reading very high, even though he had pulled the throttle
4 all of the way back as far as it would go, that is, to the stop,
5 the detent. He said no matter how hard he had pulled on the
6 throttle it would not go below the 1400 RPM. He therefore, on his
7 testimony, shut the engine off, did not prime it again since it
8 already had been run and had been primed, and he thought maybe a
9 restart would do something. He did restart it, and on his
10 testimony, the engine again went immediately back to run at 1400
11 RPM, again with the throttle pulled back to the stop, indicating
12 that in his past experience that position with the throttle lever,
13 the engine should have been indicating somewhere in the
14 neighborhood of 500 to 550 RPM.

15 He stated that he did not return to the aircraft until
16 about two weeks later, that there was about a two-week period
17 between the sign-off, which is shown on Exhibit A-4 as occurring
18 on February 11, which was also admitted, and an inspection on
19 March 1st of 2013. These are all occurring in the year 2013. On
20 his testimony, no one had access to this aircraft during that
21 interim period between February 11 and March 1st of 2013, except
22 the Respondent. On his testimony, the aircraft was secure at
23 Henderson Airport. He testified about what the security was at
24 the airport at Henderson, and I will discuss the Respondent's
25 version of security subsequently.

1 Mr. Brownell is an Aviation Safety Inspector. He has
2 held an Airframe and Powerplant Certificate for about 25 years,
3 has been an Aviation Safety Inspector for 7 years, and has held an
4 Inspection Authorization for 8 years. He was involved in this on
5 the complaint filed with the FAA by Mr. and Mrs. McNish.

6 He succinctly testified that on his inspection, which
7 was done on March 1st, 2013, that he found two separate Federal
8 Aviation Regulation violations, which I will discuss subsequently.

9 The first violation that he testified to was the finding
10 that there was an improper placard placed on the ELT, and that of
11 course, was also admitted in the Respondent's Answer.

12 Mr. Brownell testified that on his inspection he took
13 photographs, and the photographs that were received in evidence
14 were testified to by him as those taken by him on the dates in
15 question. When he went out to the aircraft he took photographs,
16 Exhibits A-2 and A-3. A-2 shows the throttle lever fully back in
17 the detent; it won't go any further. And A-3 is to show that the
18 setting screw is not properly set, according to him, that the
19 carburetor screw does not completely hit the stop, so when the
20 throttle lever is pulled back to as far as it will go, the screw
21 does not make contact with the controlling arm and therefore,
22 cannot set at the correct RPM setting.

23 He also testified that he looked at the Maintenance
24 Manual, which was received, excerpts, as Exhibit A-8, pointing out
25 in Paragraph 8-25, which is on page 12 [sic] of the Exhibit, that

1 it calls out in Subparagraph (d) that the maintenance on the
2 carburetor is to include pulling the throttle and mixture levers
3 in the cockpit full aft to ascertain that the idle screw contacts
4 its stop and that the mixture control arm contacts its lean
5 position. The mixture control is then given for the various
6 models on the aircraft, and that is the maintenance that is to be
7 performed. And the idle setting is supposed to be in the
8 neighborhood of 550 to 650 RPM. He testified when the idle screw,
9 as depicted on the photograph, does not contact the stop arm that
10 the idle will be high. Depending on what the gap is, there is no
11 telling what the improper setting might be.

12 He testified with respect to photograph A-9 and A-10.
13 A-9, on his testimony, shows the idle screw not contacting, and A-
14 10 shows the throttle screw as it should be. And in his
15 testimony, therefore, the Respondent had not followed the
16 manufacturer's service recommendations and that this was not an
17 acceptable practice to the Federal Aviation Administration for the
18 performance of either maintenance or an inspection.

19 On cross-examination, he agreed that his inspection had
20 occurred on March 1st, 2013, and that also he had viewed the
21 aircraft on March 5th of that year, which was about two weeks' gap
22 between the sign-off and the time of the first inspection, and the
23 time date stamps do appear on the photographs as to when they were
24 taken by Mr. Brownell.

25 On redirect he testified that the tachometer at the time

1 it was signed off by Mr. Gundersen, the Respondent, as included in
2 Exhibit A-4, does show a tachometer time of 3691.0 and that this
3 was the same tachometer time that he observed, and Mr. Guerin also
4 testified that that was the tachometer setting that he observed
5 when he inspected the aircraft on March 5th.

6 Turning to Mr. John Guerin's testimony, he testified he
7 holds both an A&P Certificate and an Inspection Authorization. He
8 has held them since about 1977, and he has worked on civil
9 aircraft since about 1982. He went out to the Henderson Airport
10 at the request of the owners, on his testimony, and that on March
11 1st, he met with Inspector Brownell at Henderson Airport and that
12 he looked at the aircraft because of the alleged RPM issue. He
13 testified he looked at the tachometer and verified the tachometer
14 times as I have already had reference to them, that is, the
15 tachometer in the aircraft showed 3691.0, which is the same as
16 recorded in the sign-off.

17 Mr. Guerin testified that he inspected the carburetor
18 and to his observation that the carburetor rigging was incorrect.
19 The carburetor was not in the sequence which it should be, which
20 is where the throttle lever in the cockpit would be pulled back to
21 an idle position, that the idle screw would meet the controlling
22 arm and set the idle where it should be, 550 to 650 RPM. With the
23 idle screw incorrectly set, the RPM will be at some other setting.

24 On cross-examination he simply testified that the idle
25 stop was in a different position than what it should be and that

1 photograph A-3, Exhibit A-3, is the position that he observed it
2 to be in when he inspected it on March 1st, 2013.

3 Respondent testified on his own behalf. He holds
4 multiple pilot ratings, Flight Instructor, apparently Ground
5 Instructor ratings also. He has held an Airframe and Powerplant
6 certificate since 1990 and Inspection Authorization since 1993,
7 and requalified for Inspection Authorization, I believe, last
8 year, in April of 2013. He also testified that he has worked with
9 the various Flight Standard District Offices giving safety
10 seminars, acting as a safety seminar instructor.

11 As admitted in his Answer to the Complaint, he replaced
12 the carburetor. On his testimony, however, he set the idle screw
13 when he replaced the carburetor so that the aircraft, when the
14 throttle was reduced to idle position, would idle at 750 RPM. He
15 testified as to why he set it at this higher rating, essentially
16 because of the atmospheric conditions, altitude in Nevada, so that
17 the aircraft would not die on a landing if the throttle was
18 reduced to the lower RPM setting of 550 to 650, which would leave
19 the aircraft stopped on the active runway. Whether or not 750 is
20 too high for here, the issue to me is whether the idle was set so
21 that the aircraft idled at 1400 RPM, which is clearly outside the
22 manufacturer's recommendations.

23 On his testimony, he reviewed the Exhibit photographs
24 A-3 and A-9, looking at the idle screw. On his testimony, he
25 testified affirmatively that he had not touched the carburetor or

1 the resetting of the idle screw at any time after he had signed
2 off the aircraft logbook, which would have been February 11 of
3 2013. Specifically, he stated that the idle screw was touching
4 the idle stop lever or arm when the throttle was reduced to the
5 idle setting in the cockpit when he signed off the aircraft.

6 He testified about the security at the airport,
7 disagreeing with Mr. McNish as to the efficacy of the security
8 procedures at the airport. However, the significant thing is in
9 his testimony he offered no positive evidence of having seen
10 anyone tampering with this aircraft at any time between the time
11 he signed it off and the time that Mr. Brownell, Mr. McNish and
12 Mr. Guerin also inspected this aircraft and found the idle screw
13 to be in the position as depicted in the photograph Exhibits.

14 That to me is the pertinent action and evidence in this
15 case. The burden of proof in this case rests with the Complainant
16 at all times and he must carry that burden by a preponderance of
17 the reliable, probative and credible evidence.

18 Herein -- I am looking at the Admissions -- there is no
19 dispute that the Respondent, both as he performed the maintenance
20 and as his inspection, overlooked that the maintenance placed an
21 improper placard on the ELT and he improperly performed the
22 inspection, in that he did not discover that before he signed off
23 the aircraft and returned it to service. So it is established at
24 least that violation has occurred.

25 Turning to the question of someone tampering with the

1 aircraft subsequent to his return of the aircraft to service on
2 February 11. There is no evidence that any person tampered with
3 the aircraft. Supposition that someone could have gone out on the
4 ramp and done so is not evidence that it occurred. There is no
5 evidence offered that Mr. McNish was at this aircraft at any time
6 other than when he testified he went there to try to start the
7 aircraft. There is no evidence offered that Mr. McNish tampered
8 with the carburetor. It is really very unlikely, at best, that
9 some unknown individual would certainly go out to Henderson
10 Airport, go out on the ramp, pick the Respondent's aircraft at
11 random and reset the carburetor screw. It just does not make much
12 logical sense as to why somebody would do that to an aircraft that
13 he doesn't know anything about or who owns it. And anyway, there
14 is no positive evidence that anyone tampered with this aircraft by
15 resetting the screw for idle between the time the Respondent
16 signed it off and the time that Mr. Brownwell, Mr. McNish and Mr.
17 Guerin observed the idle screw to be in the position as shown in
18 the photographs, that it, is incorrectly set so that it does not
19 touch the controlling arm.

20 I find, therefore, that simply, that the credible
21 evidence in this case is that offered by the Complainant, and as
22 there would be any credibility issue in this case, I resolve that
23 in favor of the Complainant. I must find, therefore, that in this
24 instance that the Respondent in his actions, and I make these
25 findings, that he performed maintenance incorrectly in two steps.

1 He put the wrong placard on the ELT and then in his inspection,
2 that is the second error, he did not catch the error that he had
3 performed. Even though it is the same person, he is wearing two
4 hats: one as the mechanic doing the work and the other as the
5 exercise of his Inspection Authorization.

6 It is the same with reference to the setting of the idle
7 on the carburetor after he installed it. He improperly, as a
8 mechanic, did not set the idle screw correctly so that it touched
9 the idle control arm so that when the throttle was reduced in the
10 cockpit, that the aircraft would idle at its correct
11 manufacturer's recommended idle speed. And secondly, when he put
12 on his Inspection Authorization duty, he improperly signed the
13 aircraft off and returned it to service without correcting the
14 improper setting of the idle screw. And lastly, he also did not
15 follow the recommendations in the Manufacturer's Maintenance
16 Manual. Therefore, I must find and conclude that a reasonable
17 preponderance of the reliable, probative and credible evidence
18 does show that the Respondent failed to determine whether or not
19 aircraft N5949U met the applicable airworthiness requirements at
20 the time he returned it to service.

21 I therefore find on a preponderance of the evidence that
22 the Respondent has acted in regulatory violation of Section
23 43.13(a) of the Federal Aviation Regulations, in that he failed to
24 use methods, techniques, or practices prescribed in the current
25 Manufacturer's Maintenance Manual when he performed the

1 maintenance on this aircraft.

2 I further find that he operated in violation of Section
3 43.15(a)(1) of the Federal Aviation Regulations, that when he
4 performed his inspection on this aircraft, he failed to perform
5 the inspection as to determine if the aircraft met all its
6 applicable airworthiness requirements, in that it had the improper
7 placard and that the idle setting on the aircraft was improperly
8 set.

9 Turning then to the issue of sanction, deference has
10 been requested and is to be shown in the absence of any showing
11 that the sanction sought is arbitrary, capricious, or not in
12 accord with Board precedent. The Sanction Guidance Table shows
13 that for failure to accomplish maintenance properly, a
14 recommendation of 30 to 60 days' suspension, and for not
15 accomplishing an inspection properly, anywhere from a 60-day to
16 revocation of the inspection authorization.

17 Here, as I have already discussed in my decision, we
18 have the same individual performing improper maintenance and then
19 improper inspection with respect to the placard -- so we have two
20 things there -- and then improper setting of the idle on the
21 carburetor, and then improper inspection with respect to signing
22 the aircraft off for return to service. Looking, therefore, that
23 we have essentially four instances of improper actions on the part
24 of Respondent with respect to his maintenance and inspection, and
25 looking at the recommendations in the Sanction Guidance Table, I

1 find that, particularly since we have at least two instances of
2 improper exercise of an Inspection Authorization, which the Board
3 has always held requires a higher degree of responsibility and
4 care on the part of a holder of an Inspection Authorization as he
5 is the final sign-off or line before an aircraft is returned to
6 service for safe operation, that makes it a more serious
7 violation. I therefore find that a sanction of 135 days'
8 suspension of both the Respondent's Airframe and Powerplant
9 Certificate with attached Ratings limitations and his inspection
10 Authorization is appropriate and required on the evidence offered
11 herein. And therefore, I will affirm the Administrator's Order of
12 Suspension, the Complaint herein, as issued.

13 ORDER

14 IT IS ORDERED THAT:

15 1. The Order of Suspension, the Complaint herein, be,
16 and the same hereby is, affirmed as issued.

17 2. That the Respondent's Mechanic's Certificate with
18 Airframe and Powerplant Ratings and Inspection Authorization be,
19 and the same hereby are, suspended for a period of 135 days.

20 Entered this 26th day of February 2014, at Las Vegas,
21 Nevada.

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24 EDITED ON

PATRICK G. GERAGHTY

25 MARCH 19, 2014

Administrative Law Judge

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APPEAL

ADMINISTRATIVE LAW JUDGE GERAGHTY: Anything for the record?

MR. BYRNE: On behalf of the Administrator, no, Your Honor.

ADMINISTRATIVE LAW JUDGE GERAGHTY: Mr. Rourke?

MR. ROURKE: No, Your Honor.

ADMINISTRATIVE LAW JUDGE GERAGHTY: The record will reflect that on -- Mr. Byrne, will you come up, please? I'm asking Complainant's Counsel to take one copy of the "Appeal from an Oral Decision" and hand one copy to Mr. Rourke. And the record will reflect that Mr. Byrne has complied with my request.

There being nothing further for this proceeding, the proceeding is closed. Thank you, gentlemen.

MR. BYRNE: Thank you, Your Honor.

(Whereupon, at 11:58 a.m., the hearing in the above-entitled matter was closed.)

CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Paul M. Gundersen

DOCKET NUMBER: SE-19573

PLACE: Las Vegas, Nevada

DATE: February 26, 2014

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

Floyd Stephens
Official Reporter