

SERVED: April 13, 2015

NTSB Order No. EA-5742

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 April, 2015

)
MICHAEL P. HUERTA,)
Administrator,)
Federal Aviation Administration,)
)
Complainant,)
)
v.) Docket SE-19624
)
JOSEPH A. McGUIRE,)
)
Respondent.)
)

)

ORDER DISMISSING PETITION FOR PARTIAL RECONSIDERATION

The Administrator filed a timely petition for reconsideration of NTSB Order No. EA-5736, wherein we affirmed the law judge's order suspending respondent's airline transport pilot certificate, and all other airman certificates respondent holds, based on respondent's operation of a Hawker HS 125 when the aircraft had not been returned to service after maintenance. We reduced the suspension period of 150 days to 60 days, based on factors we found weighed in favor of mitigation. The Administrator filed a petition for reconsideration, on the basis our reduction of the sanction to 60 days was contrary to law.

Section 821.50 of our Rules of Practice govern the submission and our review of petitions for rehearing, reargument, reconsideration or modification of an order of the Board. In

a Final Rule that took effect November 15, 2012,¹ we amended § 821.50(c) to provide as follows concerning the content of such petitions:

The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable, and shall explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed. *To the extent the petition is not based upon new matter, the Board will not consider arguments that could have been made in the appeal or reply briefs received prior to the Board's decision.*²

In addition, section 821.50(d) states, “[r]epetitious petitions will not be entertained by the Board, and will be summarily dismissed.”

In our December 22, 2014 opinion and order, we considered the Administrator’s arguments concerning the appropriateness of the sanction. We fully explained our rationale for reducing the sanction.³ We stated,

Martin v. Occupational Safety and Health Review Commission is instructive in clarifying the appropriate extent of deference with which we should view the Administrator’s interpretation of the Federal Aviation Regulations and the Administrator’s choice of sanction. In this regard, consistent with Martin, the removal of the heightened deference previously codified in § 44709(d)(3) does not mean the Board, or NTSB administrative law judges, should decline to apply any deference.⁴

We then evaluated the Administrator’s imposition of a 150-day suspension to determine whether the suspension period was reasonable in light of the facts of the case. We determined a 150-day sanction was excessive, based on the facts, which were not in dispute. The Administrator’s petition for reconsideration, dated January 14, 2015, presents the same arguments we considered and rejected on review of respondent’s appeal.

¹ 77 Fed. Reg. 63245, 63252 (Oct. 16, 2012).

² 49 C.F.R. § 821.50(c) (emphasis added).

³ NTSB Order No. EA-5736 at 8-12.

⁴ Id. at 8 (citing Martin, 499 U.S. 144, 111 S.Ct. 1171 (1991) and Administrator v. Jones, NTSB Order No. EA-5647 at 19-21 (2013)).

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's petition is dismissed.

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT and WEENER, Members of the Board, concurred in the above opinion and order.