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NTSB Order No. EA-4008

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 19th day of October, 1993

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-12800
)	SE-12803
)	
CHARLES R. CROW, and)	
ERIK J. PEARSON,)	
)	
Respondents.)	
)	

OPINION AND ORDER

Respondents have appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered on April 21, 1993, at the conclusion of a two-day evidentiary hearing.¹ The law judge affirmed in part emergency orders of the Administrator which revoked all of respondents' airman

¹An excerpt from the hearing transcript containing the initial decision is attached. The cases were consolidated for appeal.

certificates.² In essentially identical complaints, respondents were charged with violating sections 61.51(c)(2)(i), 61.59(a)(2), 39.3, 91.403(a) and (b), 91.405(a), (b), and (c), 91.7(a) and (b), 91.9(b), and 91.13(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Parts 39, 61, and 91).³ The law judge sustained all the charges against both respondents except those under sections 91.7(b) and 91.9(b).⁴

Respondents have appealed the logbook falsification portion of the initial decision and the law judge's finding that respondents lack the degree of care, judgment, and responsibility of Commercial Pilot Certificate holders.⁵ Cognizant of their admissions (see n. 4, supra), respondents seek a reduction in sanction from revocation to a 90-day suspension.

After consideration of the briefs of the parties and the hearing record, the Board concludes that safety in air commerce or air transportation and the public interest require affirmation of the law judge's decision, in part. We will confine our

²Both respondents held commercial pilot certificates and flight instructor certificates.

³See Appendix for text of pertinent regulations. A copy of the December 8, 1992, Amended Emergency Order of Revocation (which served as the complaint) against Respondent Pearson is attached. The order against Respondent Crow is essentially identical. Respondents waived expedited consideration of their appeal.

⁴At the hearing, respondents, through their attorney, admitted to the following paragraphs of the complaints: 1 through 3(c); the factual allegations in 4 through 5(c); 7 through 15; and the first paragraph of 17.

⁵Respondents have filed a brief in support of their appeal. The Administrator has filed a brief in reply.

discussion to the falsification charges.

The falsification charges resulted from the examination of both respondents' logbooks by FAA aviation inspector Donald Bennett during the investigation of an accident that occurred on 10 April 1992 involving respondents' Piper Apache aircraft. The inspector testified that the two logbooks were mirror-images of each other for over 200 flights. Both respondents were listed as pilot-in-command (PIC) for these flights and it was unclear when, whether, and what type of flight instruction was given.

Respondents testified that they were co-owners of the aircraft, N3494P, and always flew the aircraft together, splitting the time 50/50, in an effort to build PIC time. They also flew together and logged identical time in a Mooney M20E, N6933U. They asserted that the act of logging identical PIC time on each flight was permissible since when one was operating the controls of the aircraft, the other was instructing.

Admitted into evidence were copies of respondents' pilot logbooks that they sent to another FAA aviation safety inspector, upon his request.⁶ Inspector Bennett also reviewed the logbooks and determined that the entries were improper because both respondents recorded PIC time in their individual logbooks for over 200 of the same flights. Transcript (Tr.) at 99. He testified that respondents sent updated logbooks⁷ to counsel for

⁶Exhibit C2 is the logbook of Respondent Pearson and Exhibit C4 is the logbook of Respondent Crow.

⁷Exhibits C17 and C18 are the revised logbooks of Pearson and Crow, respectively.

the FAA who, in turn, sent them to Mr. Bennett for the purpose of comparison with the original logbooks. Tr. at 103-04. Mr. Bennett stated that the entries from 27 September 1991 to 10 April 1992 had been revised.

Regarding Mr. Pearson's two logbooks, Mr. Bennett testified that approximately "three-fourths of the entries are modified with a signature, which is indicating safety pilot or an attempt to show dual -- dual either received or given." Tr. at 107.⁸

Mr. Bennett also compared C4 and C18, the logbooks of Mr. Crow. Again, about three-fourths of the flights entered into C4 without notation were recorded in C18 indicating dual flight or instruction given and were signed by Mr. Pearson.

Respondents argue that they intended to complete the flight entries and sign the logbook to indicate when instruction was given, but that they were behind in their paperwork.⁹ It is the Administrator's position that respondents never intended to correct the logbooks and only did so in an effort to justify having identical PIC times after they got caught. Thus, he asserts, they intentionally made false entries in their logbooks.

⁸Comparing the two logs, it is evident that there are virtually no entries in the "as flight instructor" column or the "dual received" column in Exhibit C2; however, there are many in the same columns of C17.

⁹Pearson testified that he and Crow updated their logbooks together in November 1992, by comparing notes that they had kept on pocket calendars. The entries they corrected were for flights made from April 1991 to September 1992. Unfortunately, they did not bring the calendars (which allegedly had more detailed information about instruction given and received and were updated regularly) with them to the hearing.

The law judge agreed.

Respondents make several arguments regarding the falsification charges. First, they maintain that the law judge erred when he found that Mr. Crow was not qualified to instruct in the Piper Apache until 1 July 1992, the date on which he received his multi-engine flight instructor rating.¹⁰ The law judge found that, according to FAR § 61.195, all the entries in which Crow indicated giving instruction to Pearson in the twin-engine Piper must, per se, be false. Respondents, in turn, argue that it was permissible for Crow to give instrument instruction in a multi-engine aircraft because he had a multi-engine rating on his commercial certificate and an instrument rating on his flight instructor certificate. Respondents have attached a page from Administrator's Order 8700.1, change 8, 1 March 1992, to support their argument. On brief, the Administrator agrees that "FAA Order 8700.1 offers guidance that appears to be contrary to the ALJ's determination."¹¹ Administrator's brief at 15. Nonetheless, he argues that the law judge's error was harmless, since the intentional falsification occurred when respondents

¹⁰Crow received the multi-engine rating for his commercial certificate on 17 August 1990 and the multi-engine rating for his flight instructor certificate on 1 July 1992. Pearson received his multi-engine rating for his commercial certificate on 27 September 1991 and the multi-engine rating for his flight instructor certificate on 23 December 1991. Tr. at 111-12.

¹¹Ordinarily, we will not consider extraneous information that has not been admitted into evidence. In this instance, however, the Administrator does not object, but instead agrees with respondents' premise. Therefore, we need not specifically exclude the information from our deliberative process.

entered identical PIC time in their logbooks without making any reference to instruction.

To prove intentional falsification, in violation of FAR § 61.59(a)(2), the Administrator must show that respondents made 1) a false representation, 2) in reference to a material fact, 3) made with knowledge of its falsity. Hart v. McLucas, 535 F.2d 516 (9th Cir. 1976). Actual knowledge of the falsity at the time of making the representation must be proved. Administrator v. Juliao, NTSB Order No. EA-3087 at 5 (1987).

In the instant case, the law judge rejected as implausible respondents' explanations for the identical entries in their logbooks. After evaluating all the evidence and testimony, he concluded that a preponderance of the evidence supported a finding that respondents purposely omitted any reference to instruction time in their logbooks. As the trier of fact, the law judge was in the best position to make such a credibility determination and absent arbitrariness, capriciousness, or other compelling reasons, we will not disturb the decision. See Administrator v. Smith, 5 NTSB 1560, 1563 (1986).

Even if Respondent Crow could legally give flight instruction in a multi-engine aircraft, that does not change the fact that respondents' original logbooks had over 200 identical entries for flights spanning a seven-month period. The law judge did not believe the explanation offered by respondents. On its face, each of the original logbooks was false, because both pilots logged PIC time for the same flights, something that, for

the most part, cannot be done.¹² That the entries were material is clear, especially considering respondents' own admission that the reason they conducted the flights was to build flight time, presumably to obtain higher certificates or ratings. As for whether respondents had knowledge of the falsity, it was reasonable for the law judge to believe that respondents knew the restrictions for logging PIC time, that the original logbook entries were incorrect, and that, if examined separately, the original books would mislead the reader.¹³

Respondents also contest the law judge's finding that, because there was a significant disparity between the tachometer readings and the amount of flight time logged, respondents must have padded the total flight time.¹⁴ Respondents explained the

¹²While it is true that, under FAR § 61.51(c), a certified flight instructor may log PIC time for the entire flight when he or she is giving instruction, the student may only log PIC time for the flight time during which the student is the sole manipulator of the controls.

Under FAR § 61.189(a), a certified flight instructor must sign the logbook of the person who received instruction and must include the date and amount of time of instruction. Section 61.51(b) requires that, for each flight or lesson logged, the pilot must include "[f]light instruction received from an authorized flight instructor" and "[i]nstrument flight instruction from an authorized flight instructor."

¹³The law judge found particularly telling respondents' flight of 10 April 1992. Both respondents logged PIC time for the entire flight. Respondent Crow admitted that he tried to fix an electrical short in the right generator wiring system during the flight by bypassing the switch. He testified that he had to put his head underneath the instrument panel to accomplish the repair, yet he still logged PIC time for the entire flight. In his revised logbook, he indicated "Dual Received" for the whole flight. He conceded that he could not have been operating the aircraft while he was attempting to rewire the switch.

¹⁴The Administrator introduced evidence that the Piper

differences as follows: 1) the tachometer in the Mooney was malfunctioning and ultimately had to be recalibrated; and 2) the differences in the Piper tachometer and logged time were due to the reduced power setting under which they normally operated the aircraft in order to accumulate flight time. They further assert that the law judge had no basis for believing, in contradiction to their testimony, that tachometer time and logged flight time must be the same or very close.

The Administrator maintains that the law judge's decision on this issue was based on credibility. We disagree. There was no dispute that the times were different. Respondents, however, attempted to explain why the tachometer and recorded flight times could be different by attributing the disparity in the Piper to the low power setting they routinely used in order to accumulate the maximum amount of flight time possible per flight. The Administrator did not introduce any evidence on how the tachometer works or what it measures, or otherwise rebut respondents' explanations. Inspector Bennett merely testified to the difference in the recorded times. As to a comparison for the flights between March 5th and March 17th in the Mooney, he stated that it was possible for the recorded flights to have been

(..continued)

tachometer time from 27 August 1991 to 10 April 1992 was 216.5 hours, while the recorded time in respondents' logbooks was 257.2 hours. Exhibit C-19. (When testifying to Exhibit C-19, Inspector Bennett identified "227.2" as the recorded hours, but he must have misspoke, as the number on the exhibit is "257.2.")

The engine logbook for the Mooney stated that the tachometer time was 60.79 hours for the dates of 21 December 1991 to 17 March 1992, while the flight time recorded by respondents during this time was 84 hours. Exhibit C-20.

conducted within the time period that was registered on the tachometer. The simple assertions that the times varied are not enough to prove by a preponderance of the evidence that respondents falsified their logbook entries regarding the total time of each flight. Our decision on this issue, however, does not affect the sanction, discussed infra.

Further, respondents argue that the law judge utilized information not in the record to render his decision. They claim the law judge was in error when he used his own knowledge of the distance between Ft. Lauderdale and Gainesville, Florida, to compute the miles per hour of a flight that respondents had logged. Certainly, something that is public knowledge, such as the distance between two cities, is not an improper "factual declaration," as respondents assert.¹⁵

Regarding sanction, respondents ask that the revocation of their airman certificates be reduced to a 90-day suspension. However, Board precedent reveals that intentional falsification generally results in revocation, and we think it should so result here. See, e.g., Administrator v. Cassis, 4 NTSB 555, 557 (1982), aff'd Cassis v. United States, 737 F.2d 545 (6th Cir. 1984), and cases cited therein. Had it not been for the aircraft accident of 10 April 1992, respondents' identical logbooks may never have been discovered. The false entries

¹⁵ Respondents' protest that the law judge acted as an advocate when he questioned Mr. Crow is without merit. Under the Board's rules, a law judge may examine witnesses. 49 C.F.R. § 821.35(b)(3).

easily could have been relied upon by the FAA when evaluating eligibility for an Airline Transport Pilot certificate. It is crucial that pilot logbooks be free of knowing misrepresentations of fact in order that the FAA may effectively discharge its responsibility to promote air safety. See Cassis v. United States, 737 F.2d 545 (6th Cir. 1984); Administrator v. Reno, NTSB Order No. EA-3622 (1992) at 5. We conclude that these serious violations, taken in combination with the other infractions committed by respondents, warrant revocation.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondents' appeal is denied;
2. The initial decision, as modified in this opinion, is affirmed; and
3. The revocation of respondents' airman certificates is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

APPENDIX**§ 61.51 Pilot logbooks.**

(c) Logging of pilot time - ...

(2) Pilot-in-command flight time. (i) A recreational, private, or commercial pilot may log pilot-in-command time [for] only that flight time during which that pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated, or when the pilot is the sole occupant of the aircraft, or, except for a recreational pilot, when acting as pilot-in-command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulations under which the flight is conducted.

§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.

(a) No person may make or cause to be made-...

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for the issuance or exercise of the privileges, or any certificate or rating under this part.

§ 39.3 General.

No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive.

§ 91.403 General.

(a) The owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition, including compliance with part 39 of this chapter.

(b) No person may perform maintenance, preventive maintenance, or alterations on an aircraft other than as prescribed in this subpart and other applicable regulations, including part 43 of this chapter.

§ 91.405 Maintenance required.

Each owner or operator of an aircraft-

(a) Shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter;

(b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service; [and]

(c) Shall have any inoperative instrument or item of equipment, permitted to be inoperative by § 91.213(d)(2) of

this part, repaired, replaced, removed, or inspected at the next required inspection.

§ 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 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.

Section 91.9 (b) states that an aircraft may not be operated without a current airplane flight manual on board.