

SERVED: April 29, 1993

NTSB Order No. EA-3871

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 April, 1993

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JOSEPH M. DEL BALZO,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-11267
v.	)	
	)	
JACK W. KASPER,	)	
	)	
Respondent.	)	
	)	

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**OPINION AND ORDER**

Respondent has appealed from the oral initial decision of Administrative Law Judge Jerrell R. Davis, rendered at the conclusion of an evidentiary hearing on March 13, 1991.<sup>1</sup> The law judge, by that decision, affirmed an order of the Administrator finding that respondent violated sections 61.3 and 91.9 of the

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

Federal Aviation Regulations ("FAR," 14 C.F.R. Parts 61 and 91),<sup>2</sup> but reduced the sanction imposed from 180 to 150 days.<sup>3</sup>

Respondent does not contest the facts as alleged by the Administrator, but rather, argues that the sanction imposed is excessive. He admits that while acting as pilot-in-command of a Piper PA 31-T, he struck an antenna at the Instrument Landing System (ILS) middle marker as he attempted an ILS approach to Eugene, Oregon. The antenna stood three feet higher than an eight-foot structure located directly behind it. Tire marks from the landing gear were visible on the building's roof. The aircraft sustained substantial damage, in that the left main landing gear was completely torn off. An FAA inspector testified that according to the ILS approach plate, the minimum altitude over the middle marker was 200 feet. Transcript (Tr.) at 75. The inspector concluded that respondent had been very careless.

After consideration of the briefs of the parties and the record below, the Board concludes that safety in air commerce or air transportation and the public interest support the enforcement of the Administrator's order, as modified by the law

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<sup>2</sup>Under FAR section 61.3(a), a pilot-in-command is required to have, in his personal possession, a current pilot certificate. Section 91.9, now 91.13(a), states as follows:

"Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

<sup>3</sup>The Administrator filed a brief in reply but did not appeal the reduction in sanction.

judge.

Respondent contends that he did not act carelessly but, rather, responded to a dangerous situation. He testified that because there was some scattered fog in the Eugene area, he obtained an instrument clearance from Seattle for a straight in approach.<sup>4</sup> He began descending about seven or eight miles out, where the weather was consistent with visual flight rules (VFR).

When he was five miles from the runway threshold, he announced his location on the advisory frequency. Almost immediately, he heard a transmission from a Seneca aircraft saying it was VFR, four miles on final. Because he feared they could be on a collision course, respondent quickly reduced the power and began scanning the horizon for the other aircraft. He claims that this occurrence diverted his attention so much that by the time he realized that he had drifted far below glide scope and brought the power back up, his landing gear struck the antenna. At that point, he decided to return to Salem, his point of origin. Tr. at 104-05.

Shortly after landing, an FAA operations inspector asked to see respondent's airline transport pilot (ATP) certificate and medical certificate. Respondent produced the original medical but a facsimile ATP certificate. He told the inspector that the original was at home. At the hearing, respondent testified that he called the inspector the following day to tell him that the

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<sup>4</sup>At the time of respondent's flight, the tower at Eugene was closed.

original had been in his wallet all along but, due to nervousness, he had been unable to find it when asked.

On appeal, respondent claims that the public interest and safety in air commerce are not served by finding him in violation of section 61.3 and, therefore, the charge should not be considered since: 1) he actually had the original certificate in his wallet; 2) he is a bona fide pilot; 3) his failure to produce the original upon demand had no impact on air safety; and 4) a suspension for this violation would have a negligible deterrent effect.

We are unable to espouse this reasoning. First, the question of whether respondent had the original certificate in his wallet at the time the inspector asked for it calls for a credibility determination. In any event, respondent did not produce the certificate upon demand.<sup>5</sup> Under the regulation, a pilot-in-command is required to have his original certificate with him, and the law judge believed that respondent did not. See Administrator v. Munson, EA-3663 (1992)(ATP certificate suspended for seven days when respondent acted as pilot-in-command without a current medical certificate and pilot certificate in his possession). Reversal of the charge is not warranted.

As to the length of the suspension imposed, it is respondent's assertion that although his attention had been diverted completely, causing him to strike the antenna and an

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<sup>5</sup>See FAR section 61.3(h).

eight-foot building, his actions were not careless enough to justify a suspension of 150 days.<sup>6</sup> He contends that Board precedent does not support such a severe sanction for a section 91.9 violation, even if combined with the section 61.3 charge. We disagree. Respondent allowed himself to be so distracted that he forgot to monitor his rate of descent, realizing his error when he was a mere eight feet from the ground. In his appeal, respondent correctly recognizes that often when a pilot has been found to have violated only section 91.9, the sanction was less severe than a 150-day suspension. It must be noted, however, that there are virtually limitless scenarios in which a pilot-in-command can be found to have acted carelessly or recklessly. Thus, the circumstances and gravity of each case must be assessed individually.

Given the facts of the instant case, the 150-day suspension is not contrary to precedent and policy and will be upheld. See, e.g., Administrator v. Barchard, 3 NTSB 814 (1977)(ATP found to have been careless when, during an instrument landing, aircraft struck an antenna and then the ground several hundred feet short of the runway received a 6-month suspension); Administrator v.

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<sup>6</sup>Respondent testified that

for a period of about 15 or 20 seconds ... my attention was diverted enough that I became totally focused on looking for this airplane. And I don't believe that that's careless or reckless at all. Because I think you can talk to any pilot or any person for that matter and I think that in an emergency situation you find that that's exactly what happens to a human being.

Tr. at 124.

Ramsay, 5 NTSB 2097 (1987) (respondent who taxied aircraft at an excessive speed without maintaining forward visibility and collided with another aircraft received a 180-day suspension). See also Administrator v. Kohorst, NTSB Order No. EA-3799 (1993)(mid-air collision; 180 days); Administrator v. Hamer, NTSB Order No. EA-3587 (1992)(mid-air collision during formation flight; 180 days); Administrator v. Myrick, NTSB Order No. EA-3578 (1992)(respondent overtook and passed within 150 feet of another aircraft; 90 days). Compare the aforementioned cases with Administrator v. Pratt, NTSB Order No. EA-3645 (1992) (respondent carelessly allowed an engine of a Boeing 707 to strike a runway during a landing approach; 60 days).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The Administrator's order, as modified by the initial decision, is affirmed; and
3. The 150-day suspension of respondent's airline transport pilot certificate shall begin 30 days after service of this order.<sup>7</sup>

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

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<sup>7</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).