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NTSB Order No. EA-4528

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 February, 1997

BARRY L. VALENTINE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14330
v.)	
)	
WESLEY A. BELLIS,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The Administrator has appealed from the order Administrative Law Judge William A. Pope, II, issued in this proceeding on August 16, 1996.¹ By that order, the law judge, on the respondent's motion, dismissed as stale a complaint alleging that respondent had violated sections 43.13(a) and (b) and 43.15(a)(1) of the Federal Aviation Regulations ("FAR," 14 CFR

¹A copy of the order is attached.

Part 43).² As we find, for the reasons given below, no error in the law judge's decision, the appeal will be denied.

On December 15, 1995, the Administrator issued an emergency order that revoked respondent's Inspection Authorization on the ground that his performance of annual inspection on a Cessna 150 aircraft on March 6, 1995 had been deficient.³ Specifically, the

²FAR sections 43.13(a) and (b) and 43.15(a)(1) provide as follows:

§ 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 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).

§ 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...

³The respondent waived expedited handling of his appeal to the Board from the emergency order.

order, which became the complaint in the proceeding, alleged that respondent had returned the aircraft to service when it exhibited several discrepancies that required correction in order to comply with airworthiness standards; namely, two areas of severe corrosion (the battery box and on the fuselage above and aft of the windshield), two drill stopped cracks on the firewall, and two worn engine shock mount pads. Because more than 6 months had passed between the date of the alleged offenses and the Administrator's advice to the respondent that his I.A. would be immediately revoked, the respondent moved for dismissal of the complaint under Section 821.33 of the Board's Rules of Practice, 49 CFR Part 821.⁴ The law judge, as noted above, granted the

⁴Section 821.33 provides as follows:

§ 821.33 **Motion to dismiss stale complaint.**

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that the imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations and proceed to adjudicate only the remaining portion, if any, of the complaint.

(3) If the law judge wishes some clarification as to the Administrator's factual assertions of good cause, he shall obtain this from the Administrator in writing, with due service made upon the respondent, and proceed to an informal determination of the good cause issue without a hearing. A

motion, concluding that the complaint, notwithstanding its allegation to the contrary, did not present an issue of lack of qualification and that the Administrator had not demonstrated that good cause existed for the delay in issuing the revocation order.⁵ On appeal, the Administrator challenges only the conclusion that the complaint did not present a legitimate issue respecting respondent's qualification to hold an I.A.

The Administrator does not dispute that the range of sanctions under his Enforcement Sanction Guidance Table for the failure of an I.A. holder to properly accomplish an inspection is a suspension of the I.A. for a period of from 60 to 180 days. See F.A.A. Order No. 2150.3A, App. 4 at 14. Nevertheless, he takes the position that because revocation of an inspection authorization for serious violations of the kind alleged here has been sustained by the Board on occasion in the past, the law

(..continued)

hearing to develop facts as to good cause shall be held only where the respondent raises an issue of fact in respect of the Administrator's good cause issue allegations.

(b) In those cases where the complaint alleges lack of qualification of the certificate holder:

(1) The law judge shall first determine whether an issue of lack of qualification would be presented if any or all of the allegations, stale and timely, are assumed to be true. If not, the law judge shall proceed as in paragraph (a) of this section.

(2) If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he shall proceed to a hearing on the lack of qualification and not merely against a proposed remedial sanction.

⁵The law judge's good cause finding reflects a judgment that the Administrator, who did not learn of the possible maintenance violations until six months and a day after the respondent's inspection, did not process the matter with the expedition belated discovery requires.

judge erred by not allowing the matter to proceed to hearing "at which a record of the severity of the Respondent's conduct could be developed" (Brief at 14) and, presumably, a decision could be made as to whether a more severe than usual sanction should be upheld. We find no error in the law judge's ruling.⁶

The law judge, in the face of a claim that the lack of qualification issue had been raised solely to evade the stale complaint rule, properly undertook to assess whether revocation for the alleged offenses was customary or normal. Having correctly concluded that a suspension, not revocation, was generally sought in cases in which an I.A. holder was alleged to have performed a faulty inspection, the law judge reasonably, we think, found that the assertion of an issue of lack of qualification was not dispositive in the context of a complaint that did not give any basis for the pursuit of a greater sanction than would be typically imposed for the charges alleged.⁷

In order to present an issue of lack of qualification, a complaint must allege an offense or offenses that, if true, would

⁶The law judge determined that, under Board precedent, an I.A. ordinarily would not be revoked in a case such as this one in the absence of a violation history.

⁷The Administrator asserts on brief (at p. 9) that "[t]he complaint specifically alleges that the egregiousness of the Respondent's lapse demonstrates the Respondent's lack of qualifications to hold an inspection authorization, which grants the Respondent the unsupervised authority to return aircraft to service as airworthy. FAA's Complaint at 3." Without intending to imply that the quoted language would have been sufficient to distinguish this complaint from others seeking a suspension for the same or similar violations, we note that the language does not appear anywhere in the complaint.

support a finding not just that the airman did not exercise the appropriate judgment or perform with competence on some specified date or dates, but that his conduct was so deficient that it raises a significant question as to whether the airman continues to possess the care, judgment, responsibility, knowledge or technical ability required by his certificate.⁸ Thus, unless the Administrator alleges an offense which the Board has repeatedly held implicates a lack of qualification warranting revocation, such as falsifying a logbook, flying while drunk, or flying with a suspended certificate, or explains why a remedial sanction for lesser misconduct might be justified, a complaint that essentially does no more than allege violations that routinely draw suspensions stands little chance of surviving a stale complaint motion. The law judge's conclusion that this complaint should not was well-founded and will not be disturbed.

⁸The Administrator suggests in his brief that respondent's failure to detect the discrepancies listed in the complaint amounts to grossly careless conduct that "demonstrates a lack of willingness or ability to comply consistently with the FAR...." We think the suggestion supports the law judge's determination that the qualification allegation was a pleading ploy. Since the Administrator's order only revoked respondent's I.A., he remained free to exercise the privileges of his airframe and powerplant rated mechanic certificate. Surely, if the Administrator genuinely believed that the respondent was unwilling or unable to comply with regulations pertaining to aircraft maintenance, he would have revoked the certificate as well as the authorization. Supervisory review is not required for all of the maintenance a mechanic without an I.A. is authorized to perform.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied, and
2. The order of the law judge granting the motion to dismiss is affirmed.

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