

SERVED: March 16, 1994

NTSB Order No. EA-4108

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 5th day of March, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12630
v.)	
)	
FRANK L. BRUNE,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent, acting pro se, has appealed from the oral initial decision issued by Administrative Law Judge Jerrell R. Davis at the conclusion of a hearing held in this case on October 9, 1992.¹ In that decision, the law judge affirmed the Administrator's order suspending respondent's airline transport pilot certificate for 15 days based on his having served as

¹ Attached is an excerpt from the hearing transcript containing the oral initial decision.

pilot-in-command of a commuter passenger-carrying flight when he did not possess a current first-class airman medical certificate, in violation of 14 C.F.R. 61.3(c).² As discussed below, we deny the appeal and affirm the initial decision.

Respondent admits that he piloted an Air Nevada flight on September 5, 1991, when his first class medical certificate, required for the flight, had expired on August 31, 1991. At the hearing, which was limited to the issue of sanction, respondent attempted to persuade the law judge that a letter of warning³ was more appropriate for his violation than the 15-day suspension of his pilot certificate sought by the Administrator. Respondent emphasized that, as a result of the same FAA inspection which uncovered his violation, several other Air Nevada pilots, who were apparently found to have violated flight and duty time requirements, were issued letters of warning. He opined that flight and duty time violations represented a greater threat to

² Section 61.3 provides, in pertinent part:

§ 61.3 Requirement for certificates, rating, and authorizations.

* * *

(c) *Medical certificate.* Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter.

* * *

³ A letter of warning merely indicates that certain conduct may have been a violation of the Federal Aviation Act or an order or regulation issued under it. It is classified as an administrative action, as distinguished from a legal enforcement action. See 14 C.F.R. 13.11 and 13.19.

air safety than the inadvertent lapse of a medical certificate.

Prior to the hearing, respondent had requested, by letter to the law judge, copies of the warning letters which were issued as a result of the Air Nevada base operations inspection. In response to respondent's request, counsel for the Administrator apparently provided respondent with the names of five pilots who had received such warning letters, but enclosed copies of only four of the letters. At the hearing, respondent attempted to introduce the letters into evidence. However, upon discovering that none of the letters dealt with a failure to have a current medical certificate, the law judge rejected them as irrelevant to this case.

On appeal, respondent's sole argument is that the Administrator's failure to provide him with a copy of the fifth warning letter denied him his right to present evidence in support of his case, and constitutes prejudicial error. The Administrator asserts in his reply brief that the omission of the fifth letter was merely an oversight, and it most likely pertained to a flight and duty time violation like the other four letters, a matter which the law judge correctly determined was irrelevant. The Administrator also argues that, if respondent truly believed his defense would be prejudiced by the absence of the fifth letter, he should have filed a motion to compel its production.

We conclude that respondent was not prejudiced by the Administrator's failure to provide him with the warning letter.

Even if the letter involved a violation of section 61.3(c),⁴ it would still be irrelevant to our consideration of this case as we are rarely justified in interfering with the Administrator's prosecutorial decisions.⁵ The 15-day suspension affirmed by the law judge is an appropriate sanction which is consistent with precedent in similar cases.⁶ Respondent has offered no valid reason for reducing that sanction.⁷

⁴ There is no indication in the record that it did. Indeed, respondent's answer suggests that he believed all the warning letters issued to Air Nevada pilots pertained to flight and duty time violations.

⁵ See Administrator v. Gersten, NTSB Order No. EA-4090 (1994) at 3-4, and cases cited therein.

⁶ Administrator v. Elstad, 3 NTSB 3354 (1981) (15 days for 1 flight); Administrator v. King, 2 NTSB 1333 (1975) (15 days for 30 hours of flight); Administrator v. McCollough, 2 NTSB 1034 (1974) (15 days for 1 flight).

⁷ To the extent respondent is asking us to order the Administrator to substitute an administrative action for an enforcement action, we have no authority to do so. Administrator v. Cardozo, NTSB Order No. EA-3404 (1991); Administrator v. Palmquist, 6 NTSB 476, 479 n.9 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 15-day suspension of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.⁸

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

⁸ For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).