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NTSB Order No. EA-4565

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 26th day of June, 1997

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BARRY L. VALENTINE,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14875
v.	)	
	)	
GROVER C. CROCKER,	)	
	)	
Respondent.	)	
	)	

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**OPINION AND ORDER**

The Administrator has appealed from the oral initial decision Administrative Law Judge William R. Mullins rendered in this proceeding on May 16, 1997, at the conclusion of a two and a half day evidentiary hearing.<sup>1</sup> By that decision, the law judge reversed an emergency order of the Administrator revoking any and all airman pilot certificates held by the respondent, including

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<sup>1</sup>An excerpt from the hearing transcript containing the law judge's decision is attached.

his airline transport pilot and flight instructor certificates, for his alleged violation of section 61.59(a)(1) of the Federal Aviation Regulations, "FAR," 14 C.F.R. Part 61.<sup>2</sup> As we find no merit in the arguments advanced in the Administrator's appeal, it will be denied.<sup>3</sup>

The respondent was a designated pilot examiner ("DPE") supervised by the FAA's San Antonio, Texas Flight Standards District Office ("FSDO"). On August 30, 1996, at and near Love Field, Dallas, Texas, he examined two applicants, Michael A. Spisak and Alan G. Larson, from Alaska seeking to add type ratings in an IA-Jet aircraft (N240AA, an Aero Commander Model 1121) to their airline transport pilot ("ATP") certificates. His designation was suspended, sometime in early October 1996, by, or at the direction of, David A. Smith, an FAA Aviation Safety Inspector in the FAA's Fairbanks, Alaska FSDO who had recently begun an investigation of Spisak, Larson, and several others in Alaska, presumably for suspected regulatory wrongdoing that is not described in this proceeding.

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<sup>2</sup>FAR section 61.59(a)(1) provides as follows:

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

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

(1) Any fraudulent or intentionally false statement on any application for a certificate, rating, or duplicate thereof, issued under this part[.]

<sup>3</sup>The respondent, by counsel, has filed a reply opposing the appeal.

Inspector Smith, on learning that Spisak and Larson had been issued temporary airman certificates with the new type rating, obtained from the San Antonio FSDO the documentation concerning the type rating exams and subsequently commenced, or headed, an investigation into the adequacy of the oral and flight examinations the respondent had administered to them. Although the San Antonio FSDO initially concluded in November 1996 that respondent's answers to questions Inspector Smith had raised justified the restoration of his authority as a DPE, Inspector Smith, citing additional concerns related to the testing, overruled that judgment and the designation was again suspended.

Five months later, the Administrator issued his April 11, 1997 Emergency Order of Revocation, which alleges that respondent made intentionally false or fraudulent entries on the applications approving Spisak and Larson for the IA-Jet type rating.<sup>4</sup>

The Administrator believes that the respondent in the two applications knowingly overstated the periods of time consumed by the oral and flight portions of the exam and falsely indicated that he had reviewed the applicant's logbooks. He therefore maintains in effect that certifications in the applications that

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<sup>4</sup>Our recounting of Inspector Smith's involvement in this case should not be read to suggest that we question his authority to exercise control over the progress of an enforcement matter on behalf of the Administrator. At the same time, we think it worth noting that his persistence in pursuing the matter against the respondent appears to have resulted from the happenstance of respondent's involvement with two individuals the inspector suspects of wrongdoing, rather than from any knowledge or concern that the respondent, before this charge was brought, had done anything in his unblemished 50-year aviation career to warrant the scrutiny that the issuance of these ratings received.

Spisak and Larson had demonstrated to the respondent that they meet the requirements for the ratings for which he endorsed them are false. The Administrator's belief is, for the most part, predicated on a judgment that respondent could not have devoted as much time to either the oral or flight testing portions of the exam as the applications reflect because certain circumstantial evidence suggests that the testing on the 30th of August started too late and ended too early for the respondent to have spent the amount of time claimed. The law judge, in a thorough and well-reasoned decision, found otherwise.

The initial decision reviews in detail all of the evidence relevant to the time the respondent began the ground portion of the testing and finished the flight portion and to the likelihood that the two applicants could have completed all required flight procedures in 2.7 hours.<sup>5</sup> Its conclusions that the oral testing began closer to 9:30 in the morning on the 30th than to 11:30, that the air work concluded around 3:30 in the afternoon, instead of before 3:00, and that the flight portion did last long enough for the two pilots to demonstrate their qualification for the type rating sought are fully explained by the law judge and abundantly supported by the testimony of respondent and his

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<sup>5</sup>The oral portion of the exam continued, according to the respondent, during the flight checkrides, with questions being asked of the nonflying pilot, as circumstances permitted. Respondent determined, and entered on the applications, that Spisak's oral took 4.1 hours and Larson's took 4.0 hours. No issue arises here from the fact that some of the testing time for the applicants overlapped. We note, also, that there is no minimum time prescribed by regulation for either part of the type rating exam.

witnesses.<sup>6</sup> The initial decision credits respondent's assertion that his listing of 3.4 hours total flight time (1.8 hours for Spisak and 1.6 hours for Larson), instead of 2.7 hours, was a mistake caused by his adding time for ground operations he thought had not been included. It also credits respondent's understanding that he could check that he had reviewed the pilot logbooks so long as he had been presented, which he was, with a reliable record of training establishing that the applicants were properly prepared to take the type rating tests. Consistent with that view of the evidence, the initial decision concludes that the respondent harbored no intent to falsify the applications.

In his appeal brief, the Administrator, in an effort to have us secondguess or throw out the credibility choices the law judge made in favor of the respondent and some of his witnesses,

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<sup>6</sup>The Administrator objects to the law judge's refusal to compel Spisak and Larson to produce certain Part 135 records or to admit others related to their experience and training in the Aero Commander before they presented themselves to the respondent for testing. We find no abuse of discretion. The respondent's testimony that the applicants demonstrated proficiency in the jet, and thus allowed the flight testing portion of the exam to be finished in less time than might otherwise have been the case, was based on his experience with them in the aircraft, not on the records the Administrator wanted to obtain from them or to have admitted, and it appears to rest as much, if not more, on a judgment concerning their capabilities as ATP-rated pilots, rather than on any exceptional, or unique, aptitude for this particular aircraft. In any event, since the law judge was aware that the applicants had only claimed about ten hours in the aircraft before the test, it seems highly doubtful that his credibility assessment of respondent would have been significantly affected if the records about which respondent appears to have had no knowledge showed that they had even less time in the aircraft. There was considerable evidence to the effect that a variety of other factors (such as weather, traffic and planning) were more pertinent to how quickly, or how long, a flight test would take.

argues, in effect and among other things, that it was arbitrary for the law judge to credit respondent's live account of the timing and nature of the testing over documentary evidence, including earlier written statements submitted by the respondent, which the Administrator believes to be more probative or reliable where inconsistencies could be said to exist.<sup>7</sup> The Administrator is mistaken. In the first place, our law judges are not obligated to find that documentary evidence offered by the Administrator is more reliable than the testimonial evidence given by the author of such documents, as the Administrator's position implies. Second, we do not withhold the deference customarily afforded a law judge's credibility assessments simply because other evidence, of whatever description, arguably could have been given greater weight. See, e.g., Administrator v. Klock, 6 NTSB 1530 (1989). Here, the Administrator does not argue that events could not have transpired as respondent and his witnesses maintain, he contends that their version should have been rejected as far less likely to have occurred than the one he insists should have been accepted.<sup>8</sup> Such a contention is

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<sup>7</sup>For example, the Administrator argues that the law judge was being arbitrary in accepting the respondent's assertion that the testing was underway between 9:30 and 10:00 a.m., since he had referenced a later timeframe, mostly in statements given before he was advised that he was the target of an enforcement probe, and because a witness for the Administrator testified that he thought that he had talked to the respondent on the phone just before he went to lunch, something he routinely does at 11:30 a.m. We see nothing in these circumstances that would preclude the law judge from believing the respondent's testimony at the hearing.

<sup>8</sup>Indeed, we view the Administrator's contention that the law

unavailing in the circumstances presented here, where the law judge made his findings with full appreciation of all of the relevant factors and other evidence in the record bearing on the appropriate weight to be given each witness's testimony and to each party's documentary submissions.<sup>9</sup> The Administrator's intense disagreement with the law judge's credibility-dependent findings is not a reason for overturning them.

In sum, we find, on careful consideration of the record and the law judge's decision, no basis in the Administrator's brief for disturbing the law judge's conclusion that no intentionally false or fraudulent entry was made in the type rating applications the respondent approved.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is denied, and
2. The initial decision is affirmed.

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

(..continued)

judge's decision is contrary to the overwhelming weight of the evidence as little more than an invitation for us to substitute our judgment for the law judge's on various credibility-related findings. We decline to do so.

<sup>9</sup>A law judge's credibility choices are also immune to attack on the ground that the stated reasons for preferring a witness's testimony over a written exhibit or for discounting a document that contradicts a witness might be debatable. We defer to a law judge's views on credibility because they are made within the context of his exclusive province to assess demeanor on the stand. While we encourage our law judges to explain such assessments whenever possible, a failure to do so does not vitiate their choices.