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NTSB Order No. EA-4589

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 29th day of August, 1997

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JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-14502
	v.)	
)	
GARY D. BROWN,)	
)	
	Respondent.)	
)	
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OPINION AND ORDER

The respondent, pro se, has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, rendered in this proceeding at the conclusion of an evidentiary hearing held on July 30, 1996.¹ By that decision, the law judge upheld a 90-day suspension of respondent's inspection authorization for a violation of section 43.15(a)(1) of the Federal Aviation

¹An excerpt from the hearing transcript containing the initial decision is attached.

Regulations (FARs).² 49 C.F.R. § 43.15(a)(1). As discussed below, we deny the appeal.

The order of suspension, filed as the complaint, alleged, in pertinent part:

1. You hold Airman Certificate No. 534506256 with Inspection Authorization.
2. On or about October 3, 1994, you performed an annual inspection on Civil Aircraft N7919T, a Cessna 175A, and determined it to be in airworthy condition.
3. At the time of the inspection, the aircraft was unairworthy due to extensive corrosion of the wings and fuselage.
4. At the time of the inspection, Civil Aircraft N7919T had a U.S. airworthiness certificate.

On December 8, 1994, an FAA inspection performed on the same aircraft revealed extensive corrosion which, according to the Administrator, rendered the aircraft unairworthy and could not have developed in the two months between respondent's inspection and the FAA's inspection.

In his appeal, respondent challenges the qualifications and conclusions of the Administrator's expert witnesses, presumably contending that the law judge placed too much weight on their

²The regulation states as follows:

§ 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.

testimony. He further asserts that the Administrator did not define airworthiness and did not establish that the aircraft was not airworthy at the time of his inspection.³

We find no error in the law judge's decision to credit the testimony and opinions of FAA Aviation Safety Inspector Thomas Pace and Jack Treadway, chief inspector at an FAA-certified repair station specializing in airframe and welding, over the testimony of respondent. Inspector Pace holds an Airframe and Powerplant (A & P) certificate, and, prior to his six years as an aviation safety inspector, spent 24 years in general aviation and corporate aviation as a mechanic, director of maintenance, and vice president of maintenance.⁴ (Tr. at 46.) Before becoming an FAA inspector, he held an inspection authorization. (Tr. at 47.)

³Respondent also claims he was assured that his response to the FAA inspector's Letter of Investigation (LOI) would remain confidential. Instead, it was entered into the record. (Exhibit (Ex.) A-5.) His assertion, however, has no merit. A response to an LOI is relevant to an enforcement case, and it is unreasonable for a respondent to presume that such a letter would not be made part of the record. In addition, respondent noted his objection to the admission of the document at the hearing but subsequently told the law judge that he "[did not] have any problem with it being ... admitted [into evidence]." (Transcript (Tr.) at 54, 57.) The law judge adequately addressed the issue at hearing and we have not been provided with a reason why it should be revisited now.

⁴Although the attorney for the Administrator did not move to have Inspector Pace or Mr. Treadway designated as experts, their qualifications were established on the record and it was not error for the judge to treat their testimony as expert testimony. Further, respondent made no objection on the subject at hearing. He objected only to Mr. Treadway's conclusion that the aircraft could not have been airworthy on October 3, 1994, because it could not be established that Mr. Treadway looked at the aircraft on that date. The law judge did not err in overruling the objection.

Mr. Treadway stated that he has experience with corrosion on heavy jets and has worked for 20 years on the Gulf Coast. (Tr. at 25.) He also gives talks for the FAA on the subject of corrosion detection and treatment.

Inspector Pace testified that, although the aircraft's paperwork indicated that respondent had completed an annual inspection approximately two months prior to his inspection on December 8th, the aircraft "exhibited extensive corrosion." (Tr. at 48-49.) He then described missing rivets, holes in the left wing, severe corroding on the wing's skin-lap joints and leading edge, and several areas where he could push his finger through the bottom of the wing. (Tr. at 49-50.) Although the right wing had less corrosion, he determined that its structural integrity, nevertheless, was compromised. He went on to describe completely corroded skin lap joints and several rivets that had "turned to powder." (Tr. at 50.) Based on his inspection, he concluded that the corrosion on the aircraft exceeded the 20 percent allowable corrosion, as described in the applicable Cessna service newsletter. (Tr. at 51-52; Ex. A-4.) Finally, Inspector Pace determined, based on his experience, that the aircraft had not been airworthy on October 3, the date of respondent's inspection. He opined that, although it appeared as if someone had made, at one time, a haphazard effort to clean up the corrosion, the condition had been present for quite a while. (Tr. at 61-62.)

Mr. Treadway testified that he inspected the aircraft on December 5, 1994, and found a significant amount of corrosion.⁵ In some areas, the corrosion had deteriorated all the way through the metal, rendering the aircraft unairworthy. (Tr. at 28.) He stated that he could tell an attempt had been made to clean the corrosion and those areas appeared to have been painted over. (Tr. at 32.) Based on his experience, he concluded that the aircraft had been in a corroded condition for two to three years and had been unairworthy for at least two years. (Tr. at 33.)

Respondent stated that, when he inspected the aircraft it met the minimum airworthiness standards, though it was "marginal," and he told the owner that it needed an anti-corrosion treatment to remain airworthy. (Tr. at 96, 101.) He admitted that when he saw the aircraft, which was about 30 years old and had been kept on the Gulf Coast, it showed evidence of mechanical neglect and, in fact, had not had any maintenance for the previous 14 to 16 months. (Tr. at 100, 102-03.)

The Administrator presented sufficient evidence to establish by a preponderance that the Cessna was in an unairworthy condition when respondent performed the annual inspection. Respondent, on the other hand, offered no expert testimony to rebut the opinions of the Administrator's witnesses. The law judge did not err in finding that the aircraft was not airworthy

⁵He heard a "crunching" sound when he pushed on the rib behind the strut attachment on the left wing and found areas of 100 percent corrosion on the aircraft, while the maximum allowable percent of corrosion was 20 percent. (Tr. at 27-32.)

when respondent signed off on the inspection.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 90-day suspension of respondent's Inspection

Authorization of his mechanic certificate shall begin 30 days after service of this order.⁶

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

⁶For the purpose of this order, respondent must physically surrender his Inspection Authorization to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).