

SERVED: April 16, 1998

NTSB Order No. EA-4652

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 8th day of April, 1998

_____)	
)	
Application of)	
)	
THEODORE J. STEWART)	
)	Docket 226-EAJA-SE-14084
for an award of attorney's fees)	
and related expenses under the)	
Equal Access to Justice Act (EAJA))	
)	
_____)	

ORDER DENYING RECONSIDERATION

The Administrator seeks reconsideration of NTSB Order No. EA-4608, served November 26, 1997, wherein the Board affirmed, in part, the law judge's decision to award attorneys fees pursuant to the Equal Access to Justice Act ("EAJA").

The Administrator's petition fails to raise an issue that was not previously and thoroughly considered by the Board in its original decision. Specifically, we are no more persuaded now than we were when issuing our original decision that the Administrator had substantial justification for her decision to prosecute applicant for intentional falsification on the basis of flight time and aircraft use records he did not prepare and whose accuracy, even excluding various evident errors, could not be reasonably gauged.¹

¹ The Administrator's insistence that it was appropriate to test applicant's credibility against these records is not predicated on an adequate showing of their trustworthiness as substantiated

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

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

through a thorough inquiry, but on a presumption that any inconsistencies between applicant's claims and the information in the records must be accepted as proof of his intent to falsify certificate applications that he later completed or reviewed. The fact that the Administrator's investigative task was made more difficult by the predictable reluctance of those who were involved in the preparation of the records to cooperate, once they were targeted for investigation, does not change our view.