



FLIGHT-WATCH



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INFORMATION BULLETIN

From: Alan Armstrong
To: The General Aviation Community
Date: June 30, 2009
Re: June Flightwatch

BOARD PERSISTS IN ADJUDICATING FALSIFICATION CASES ON SUMMARY JUDGMENT

I. INTRODUCTION

Historically, if a pilot is accused of violating the Federal Aviation regulations, he receives a trial or hearing before an Administrative Law Judge. The judge considers the evidence and then renders a decision based upon the evidence. There is, however, a disturbing new trend at the National Transportation Safety Board. This trend is to have pilots lose their cases without ever having a hearing. This article will discuss that phenomenon.

II.

THE SINGLETON CASE

Mr. Singleton was an airline transport pilot who was arrested for driving under the influence. On March 14, 2008, his driver's license was suspended by the State of North

Carolina for an alcohol related offense.

On July 24, 2008, the FAA's Security and Investigations Division sent a letter to Respondent advising him that it had come to their attention that his driver's license had been suspended or revoked for an alcohol related offense in that this was evidence that he intentionally provided a false statement on his medical application form with respect to question 18v.

Question 18v on the medical application form asks for a history of the following:

- (1) Any conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or
- (2) History of any conviction(s) or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an educational or rehabilitation program.

The evidence provided by the Respondent was that a court order had been issued revoking his driver's license, and he had to obtain a limited driving privilege permit. The documentation indicated that the Respondent had

surrendered his driver's license. Further, the documentation indicated that there was probable cause to believe that the Respondent had an alcohol concentration of 0.80 or more.

The FAA brought an action to revoke his airline transport pilot certificate and his medical certificate. It also moved for a summary judgment. Summary judgment is a process or procedure whereby one party asks the court to find that there is no material question of fact and the party is entitled to judgment as a matter of law. When such a motion is made, all inferences in favor of the party responding to the motion are to be construed in favor of the Respondent, not in favor of the moving party.

III. THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

The case was decided by Judge William A. Pope, II of the NTSB who sustained the FAA's motion for summary judgment and found that there was no material question of fact. Judge Pope made this ruling even though the pilot maintained that he did not "intentionally" falsify the medical application form.

IV. THE DECISION OF THE NTSB

The NTSB affirmed the decision of Judge Pope finding that the Respondent knew his driver's license had been suspended in that he had had to obtain a limited driving permit. By reason of the foregoing, the

Board leapt to the conclusion that he *must have known* his response to question 18v on the medical application form was false. The Board *did not give the respondent any chance* to demonstrate how or why he gave a negative response to question 18v.

At the time this newsletter is written, the airman has appealed to the United States Court of Appeals for the District of Columbia and challenged the finding made by the NTSB that he gave an "intentionally" false response to question 18v. The case lodged by the Respondent with the United States Court of Appeals for the District of Columbia is significant because this case represents part of a disturbing trend by the NTSB to adjudicate cases against pilots *without ever giving them the benefit of a trial*.

Administrator v. Singleton, NTSB Order No. EA-5437 (March 25, 2009);
*Harold B. Singleton v. Lynne A. Os-
mus, Acting Administrator, Federal
Aviation Administration, et al.*,
United States Court of Appeals for
the District of Columbia, Case No.
09-1117.



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