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NTSB Order No. EA-4619

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 9th day of January, 1998

JANE F. GARVEY, Administrator, Federal Aviation Administration, Complainant, v. WAYNE H. BAER, Respondent.	)	Docket No. SE-14771

OPINION AND ORDER

The respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on April 11, 1997, following an evidentiary hearing.[1] By that decision, the law judge affirmed the Administrator's emergency order[2] revoking respondent's mechanic certificate with airframe and

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

[2]Respondent has waived his right to proceed under the Board's Rules of Practice Applicable to Emergency Proceedings, 49

powerplant (A&P) ratings and inspection authorization (IA). The Administrator's emergency order alleged that respondent violated Sections 43.11(a)(4), 43.9(a), 43.15(a)(1), 43.13(a), 43.13(b), and 39.3 of the Federal Aviation Regulations (FAR), 14 C.F.R. Parts 43 and 39, as a result of a course of conduct evidencing faulty maintenance, inadequate inspections, and the poor record-keeping of same, performed by respondent at various times between 1989 and 1996.[3] Respondent contends on appeal that the law judge's decision is not supported by substantial credible evidence. He also argues that the law judge's ruling permitting the Administrator to amend the complaint at the hearing was erroneous. The Administrator has filed a brief in reply, urging the Board to affirm the initial decision. For the reasons that follow, we deny the appeal.

Having reviewed this entire record, we are convinced that there is sufficient evidence to support the law judge's finding that respondent lacks the care, judgment, and responsibility to hold a mechanic's certificate, and particularly to hold an inspection authorization. The Administrator has shown that over several years respondent conducted what we view as extremely deficient maintenance, inspection, and record-keeping practices.

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C.F.R. §§ 821.54 - 821.57.

[3]FAR §§ 43.11(a)(4) and 43.9(a) prescribe the content, form, and disposition of records for aircraft inspections, maintenance, and alterations; §§ 43.13(a) and 43.13(b) set forth performance rules for mechanics; § 43.15(a)(1) provides performance rules for inspections; and § 39.3 requires an operator's compliance with airworthiness directives.

At one point in the hearing, the law judge stated that he found respondent's conduct "disturbing." We agree.

One of the Administrator's contentions is that respondent failed to follow a 1987 airworthiness directive (AD) that required an ultrasonic inspection of an engine part, a crankshaft, in order to insure there were no fatigue cracks that could result in crankshaft failure with resultant loss of engine power. The crankshaft was installed in a Continental engine, serial number 169156-71F, as part of a major engine overhaul performed by respondent on June 18, 1989. The engine logbook contains a June 18, 1989 entry indicating that the overhaul was performed "Per Cont[inental] Ser[vice] Bulletins," and that all steel parts had undergone "magnaflux." A separate page followed, also dated June 18, 1989. That page had a typewritten entry indicating that "All steel parts Magnafluxed, accept [sic] the Crank Shaft. Crankshaft Ultrasonic Inspection." The words "Trout Dale" are written next to this typed entry.

In his defense, respondent produced a 1983 invoice from Western Skyways, a repair station in Troutdale, Oregon, for an ultrasonic inspection of a crankshaft. According to respondent, this was sufficient evidence to corroborate the logbook entry that, he asserts, shows that the crankshaft he installed in 1989 had undergone ultrasonic inspection and therefore that he had in fact complied with the AD. The law judge rejected this claim, and respondent offers us no persuasive reason to disturb that finding. The crankshaft that was subsequently removed from the

engine by the Administrator did not have a "U" etched on it, as required by the AD. Nor did the engine logbook entry or the invoice show serial numbers that could link the two documents to each other. In any event, we note, the AD also required that an ultrasonic inspection be performed "at the next and every subsequent crankshaft removal from the engine case," or upon "installation of a replacement crankshaft," and that the crankshaft also undergo magnaflux inspection. Administrator's Exhibit CX-1. Thus, even assuming the 1983 inspection was performed on the crankshaft that was installed by respondent in 1989, he nonetheless failed to comply with the AD. Nor are we convinced that a 1989 entry showing compliance with applicable "Service Bulletins" establishes compliance with a 1987 AD. This entry also suggests that respondent did not research applicable, **current** ADs, as a part of his inspection. In sum, regardless of whether the logbook entry and invoice show that an ultrasonic inspection was performed on the crankshaft in 1983, other serious deficiencies reveal that respondent has little regard for the need for accurate record-keeping, an allegation with which he is also charged.[4]

On June 18, 1989, respondent also installed Continental engine number 169156-71F on aircraft N1198V, a Cessna 206 that respondent owned at the time. He also performed an annual

[4]Respondent's claim that subsequent to the filing of the complaint, he determined that the crankshaft was sound, is not pertinent to these proceedings.

inspection of the aircraft and approved it for return to service. Immediately above respondent's return to service entry in the aircraft logbook, he wrote, "new paint job." According to respondent, he made the entry to apprise the new aircraft owner that the aircraft had been recently painted. The Administrator alleged, however, that respondent was required to do more before he could return the aircraft to service. The Administrator contends that respondent was required to insure that the control surfaces had been re-balanced after painting.

The Administrator's assertion is based on a Cessna Service Manual requirement that the ailerons, elevators, and rudder be re-balanced after painting.[5] Respondent argues that because the requirement appears in the repair section of the manual, it is inapplicable here. And, notwithstanding language contained in the repair section, to wit: "[a]fter repair and or repainting, balance in accordance with figure 18-9" (emphasis added), respondent contends that re-balancing is only required when the control surfaces are painted after they have sustained damage.

[5]The Administrator's complaint originally alleged that the requirement to re-balance the control surfaces after painting was contained in a Cessna Service Bulletin. In response to a discovery request, the Administrator, several months before the hearing, provided respondent's counsel with the applicable portion of the Service Manual. The law judge permitted the Administrator to amend the complaint at the hearing by substituting the word "manual" for the word "bulletin," over respondent's objections. Even if the law judge's ruling was error, there is no evidence of prejudice to respondent. The allegation clearly stated its factual predicate and any confusion that the wording may have caused respondent in the preparation of his defense was clarified, as evidenced by his subsequent defense to the charge, on receipt of the pertinent portions of the Service Manual.

The law judge found that the manual requirement, when read in its entirety, made re-balancing necessary any time the control surfaces are painted.

Respondent also argues that he cannot be expected to insure compliance with every Service Manual requirement in an annual inspection, and that there is no rule or regulation that would require such an exhaustive inspection. Perhaps, but he cannot return an aircraft to service without first insuring that it is airworthy. An FAA Inspector testified that painting is maintenance, and that even normal painting can add weight to the control surfaces and cause them to become unbalanced.[6] Aircraft maintenance must be performed in accordance with FAR § 43.13, which requires the person performing such maintenance to use the methods, techniques, and practices prescribed by the manufacturer or the Administrator, and in such a manner that the condition of the aircraft will be at least equal to its original or properly altered condition with regard to qualities affecting airworthiness. Therefore, respondent was obligated to insure that the "paint job" was performed in accordance with the regulation, and he should have determined whether the control surfaces were balanced, before he returned the aircraft to

[6]See also FAR Part 43, Appendix A, paragraph (c)(9), which defines "preventive maintenance" as "[r]efinishing decorative coating of fuselage, balloon baskets, wings tail group surfaces (excluding balanced control surfaces)...when removal or disassembly of any primary structure or operating system is not required."

service.[7] Respondent also should have been concerned with the absence of a complete entry regarding the paint job that he knew had been performed, since this was a record-keeping deficiency that had to be corrected before he returned the aircraft to service. In sum, respondent could not insure the airworthiness of the aircraft without first determining that the control surfaces were balanced after painting.

Finally,[8] the most egregious of the allegations, which alone support revocation, concern an annual inspection that respondent performed on June 3, 1996, on N30D, a Navion aircraft. During the course of the inspection, respondent identified several deficiencies that apparently could not be corrected until parts had been obtained. Respondent properly listed the deficiencies in the aircraft logbook, but then, instead of entering a finding that the aircraft was no longer airworthy, he entered his certification in the logbook with his IA stamp, signed it, and dated it. The only information lacking from the stamped entry was a description of the type of inspection performed. According

[7]Respondent's testimony that, after the Administrator's complaint had been filed, he determined from the facility that had painted the aircraft that they had in fact re-balanced the control surfaces after painting, has no bearing on our decision here.

[8]The Administrator also alleged, and respondent admitted, that he had performed annual inspections in 1994, 1995, and 1996, on aircraft N2677X, and returned it to service each time without ever determining that the aircraft's modifications for jump operations had been approved by the Administrator, or that the aircraft had met applicable AD requirements. Another allegation, that N1189V had been operated more than 50 hours after a 100-hour inspection was due, was dismissed because respondent had leased the aircraft during that time and the law judge ruled that he

to respondent, by omitting the word "annual" from the certification, he believed that he had not returned the aircraft to service and that his omission would insure that the owner would return once he had obtained the necessary parts.[9] The law judge rejected this contention, and we concur in this finding. The fact that respondent demanded payment in full before the deficiencies were corrected belies his claim. In any event, even if respondent believed the owner would return to correct the deficiencies, such a belief by the holder of an inspection authorization would not be reasonable. Contrary to respondent's argument, the regulation does not mandate the language necessary to return an aircraft to service. Moreover, respondent's omission would not preclude a reader other than the owner from believing that an annual inspection had been completed.

Respondent also told the owner that he could operate the aircraft notwithstanding these deficiencies, because the previous annual had not yet expired.[10] Such a statement is particularly alarming when made by the holder of an inspection authorization.

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could not be held responsible for that noncompliance.

[9]Respondent also contends that the reason he had not insured that the aircraft was properly placarded for fuel capacity or why he had not recorded several ADs that had been accomplished, was because he had not completed the inspection.

[10]Respondent and his son both denied the owner's assertion of this statement, although they admit that respondent permitted the owner to operate the aircraft after the inspection so that the owner could "burn off fuel." This complaint arose out of an incident that occurred when the owner was "burning off fuel." On landing, the nose gear collapsed. Nose gear deficiencies were among those noted by respondent in the logbook.

Reliance on a prior inspection is unreasonable, once a deficiency that makes an aircraft unairworthy has been identified during an annual inspection. *See* Administrator v. Booher, 3 NTSB 1425, 1430, n.16 (1978), *aff'd*, 618 F. 2d 95 (4th Cir. 1980). Finally, the undisputed evidence reveals that weeks after the "incomplete" certification was entered in the logbook, the aircraft owner returned to the shop and told respondent that the deficiencies had been corrected elsewhere. Respondent inserted the word "annual" into his certification without ever inspecting the aircraft to insure that the work had actually been accomplished. We conclude that respondent has exhibited a course of conduct that establishes that he lacks the care, judgment, and responsibility to hold a mechanic certificate with A&P ratings and an inspection authorization. *See, e.g.,* Administrator v. Dilavore, NTSB Order No. EA-3879 (1993); and Administrator v. Garrelts, 7 NTSB 208 (1990).

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and

2. The Administrator's emergency revocation order, as modified by the law judge's initial decision, and the initial decision are affirmed.

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