



U.S. Department
of Transportation

Southern Region
Office of the Regional Counsel

P.O. Box 20636
Atlanta, Georgia 30320


**Federal Aviation
Administration**

(404) 305-5200
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OCT 27 2009

FEDERAL EXPRESS, REGULAR &
CERTIFIED - RETURN RECEIPT REQUESTED


2010SO270039

Richard I. Cole


EMERGENCY ORDER OF REVOCATION

Under 49 U.S.C. §46105(c), the Administrator has determined that an emergency exists related to safety in air commerce and that immediate action to revoke your Airline Transport Pilot certificate is required. The reasons for this determination are set forth in the paragraph below entitled "Determination of Emergency."

Based on an investigation and all evidence presently before the Administrator, the Administrator finds that:

1. At all times material herein you were and are now the holder of Airline Transport Pilot Certificate No. 
2. On or about October 21, 2009, you, as second-in-command, operated Northwest Airlines Flight 188 (hereinafter NW188) on a scheduled passenger carrying air carrier flight conducted pursuant to part 121 of the Federal Aviation Regulations (FAR) from San Diego, California (SAN) with an intended destination of Minneapolis-St. Paul, Minnesota (MSP).
3. The flight plan for NW188 was for a flight time of 3 hours and 12 minutes at an altitude of 35,000 feet.
4. The planned fuel summary was based on NW188 beginning a descent into MSP at approximately 2 hours and 50 minutes into the flight.
5. NW188 was scheduled to arrive in MSP at approximately 8:00 p.m. Central Daylight Time (CDT).
6. NW188 was dispatched from SAN with an Air Traffic Control clearance to MSP.

7. At approximately 7:24:16 p.m. CDT, NW188 was instructed by the Denver ARTCC Sector 9 radar controller as follows: “northwest one eighty eight contact Minneapolis center one two four point eight seven see ya.”

8. At approximately 7:24:25 p.m. CDT, NW188 was instructed by the Denver ARTCC Sector 9 radar controller as follows: “northwest one eighty eight contact Minneapolis center one two four point eight seven.”

9. Contrary to the instruction, NW188 failed to contact Minneapolis Center.

10. At approximately 7:23pm CDT, the Denver Air Route Traffic Control Center (ARTCC) notified the Minneapolis ARTCC that NW188 was approaching Minneapolis airspace and was not in radio contact.

11. Thereafter, at approximately 7:58 CDT, and without obtaining an amended clearance, NW188 over flew MSP at an altitude of 37,000 feet.

12. NW188 failed to terminate the flight in MSP as cleared by ATC.

13. From approximately 7:23p.m. CDT to 8:14 p.m. CDT, NW188 flew in the airspace of the Denver ARTCC and Minneapolis ARTCC without maintaining radio communication with either ARTCC.

14. During the period that NW188 was not in radio contact with ATC, Minneapolis Center contacted the Northwest Airlines Company dispatch and requested that they attempt to contact NW188.

15. During the period from 7:32p.m. CDT, Northwest Airlines Dispatch tried to communicate with NW188 eight times to advise NW188 to communicate with ATC, without response from NW188.

16. At approximately 8:14pm CDT, NW188 contacted Minneapolis Center and stated, “We got distracted and we’ve over flown MSP, we are overhead EAU [Eau Claire, Wisconsin] and would like to make a 180 and to an arrival from over EAU.”

17. During the course of the above flight, NW188 was without radio contact for approximately ninety-one (91) minutes.

18. ATC made numerous attempts to communicate with NW188.

19. Despite the above attempts made by ATC, NW188 failed to respond to ATC.

20. You operated NW188 in a reckless manner that endangered the lives and property of others.

21. As a result, you violated the following section(s) of the Federal Aviation Regulations:

a. Section 91.13(a) in that no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

b. Section 91.123(b) in that except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

c. Section 91.135(b) in that except as provided in paragraph (d) of this section, each person operating an aircraft in Class A airspace must conduct that operation under instrument flight rules (IFR) and in compliance with the following: unless otherwise authorized by ATC, each aircraft operating in Class A airspace must be equipped with a two-way radio capable of communicating with ATC on a frequency assigned by ATC. Each pilot must maintain two-way radio communications with ATC while operating in Class A airspace.

As a result of the foregoing, the Administrator finds that you lack the qualifications necessary to hold an Airline Transport Pilot certificate. He therefore has determined that safety in air commerce or air transportation and the public interest require the revocation of the above-mentioned certificate(s). The Administrator further finds that an emergency requiring immediate action exists with respect to safety in air commerce or air transportation. Accordingly, this Order is effective immediately.

IT IS THEREFORE ORDERED, pursuant to the authority vested in the Administrator by 49 USC Sections 44709 and 46105(c), that:

- (1) Effective immediately, your Airline Transport Pilot Certificate No. [REDACTED] is revoked;
- (2) You immediately surrender your Airline Transport Pilot Certificate by mail or delivery to the Regional Counsel at P.O. Box 20636, Atlanta, Georgia 30320; and
- (3) No application for a new airman certificate shall be accepted from you, nor shall any such certificate be issued to you for a period of one year from the date of service of this Order.

If you fail to surrender your certificate immediately, you will be subject to further legal enforcement action, including a civil penalty of up to \$1,100 a day for each day you fail to surrender it.

DETERMINATION OF EMERGENCY

Under 49 U.S.C. §46105(c) the Administrator has determined that an emergency exists related to safety in air commerce. This determination is based on your lack of qualification to hold your Airline Transport Pilot Certificate number 2709208 because of the nature and seriousness of the violations set forth in this order.


You have demonstrated your lack of regard for or inability to adhere to your responsibility to exercise the highest standard of care, judgment, skill and responsibility as expected of an airman serving as Second in Command of a scheduled, passenger carrying flight in air transportation. Your lack of awareness that NW188 had overflown the airport to which it had been dispatched and cleared until the aircraft had reached Eau Claire Wisconsin (approximately 150 miles beyond MSP), is completely unacceptable. This is particularly true because the overflight resulted in NW188's failure to comply with its clearance as issued. Aggravating your overflight is the fact that you were not communicating with Air Traffic Control, and neither the Denver ARTCC, the Minneapolis ARTCC nor the Northwestern Dispatcher was able to communicate with NW188.

You engaged in conduct that put your passengers and your crew in serious jeopardy. NW188 was without communication with any Air Traffic Control facility and with its company dispatcher for a period of 91 minutes (over 1.5 hours) while you were on a frolic of your own. Failing to comply with ATC clearances or instructions while engaged in air carrier operations is extremely reckless. Not only did you not comply with clearances or instructions, you did not even monitor the aircraft's air-ground radios. You were disengaged and impervious to the serious threat to your own safety, as well as the safety of people for whom you are responsible. This is a total dereliction and disregard for your duties.

In conclusion, the Administrator has determined that under the criteria of FAA Order 2150.3B, Chapter 6, pages 7-10 and Chapter 7, pages 1-3 your conduct as alleged in this order demonstrates that you presently lack the degree of care, skill, judgment, and responsibility required of a certificate holder. The Administrator therefore finds in accordance with 49 U.S.C. §46105(c) and the guidance found in FAA Order 2150.3B, Chapter 6, pages 7-10 and Chapter 7, pages 1-3 that the exercise of the privileges of your certificate(s) while any proceedings related to the issuance of this Order are pending is contrary to the interest of safety in air commerce.

You may appeal from this Order in accordance with the appeal procedures set forth below.

EDDIE L. THOMAS
REGIONAL COUNSEL

BY: 
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ENCLOSURE: FAA Order 2150.3B, Chapter 6, pages 7-10 and Chapter 7, pages 1-3

APPEAL

You may appeal from this Emergency Order within ten (10) days from the date of its service, which is **October 27, 2009**, by filing a Notice of Appeal with the Office of Administrative Law Judges; National Transportation Safety Board; Room 4704; 490 L'Enfant Plaza East, SW; Washington, DC 20594 (telephone (202) 314-6150). The National Transportation Safety Board's (NTSB's) Rules of Practice in Air Safety Proceedings, 49 C.F.R. part 821, subpart I apply to appeals of Emergency and Other Immediately Effective Orders. An executed original and three (3) copies of your Notice of Appeal must be filed with the NTSB. If you appeal, a copy of your Notice of Appeal also must be served on the FAA's attorney at the address listed in this Emergency Order. If you file an appeal to the NTSB, a copy of this Emergency Order will be filed with the NTSB as the Administrator's Complaint in that proceeding.

You may also seek review of the FAA's determination that an emergency exists in this case, which makes this order immediately effective. You may request such review in a written petition filed within two days after your receipt of this order. Petitions for review of FAA emergency determinations must be served, with a copy of the FAA's emergency order attached to the petition, by facsimile or by an expedited means that ensures next-day delivery: 1) on the Office of Administrative Law Judges; National Transportation Safety Board; Room 4704; 490 L'Enfant Plaza East, SW; Washington, DC 20594 (facsimile (202) 314-6158); and 2) simultaneously and by the same means, on the FAA's attorney at the address provided in this order (facsimile **(404) 305-5223**). The NTSB rules of practice that apply to its review of the FAA's emergency determinations are available at 49 C.F.R. § 821.54 or through the NTSB's website at <http://www.nts.gov/alj/legal.htm>.

Whether or not you elect to appeal from this Emergency Order, you must immediately surrender your airman certificates to FAA, Office of the Regional Counsel, Southern Region at the address

listed in this Emergency Order. In the event that you have lost or destroyed your certificates, you will be required to execute a sworn declaration setting forth the circumstances that make you unable to surrender your certificates.

CERTIFICATE OF SERVICE

I certify that I have mailed the foregoing Emergency Order via Federal Express, Regular Mail and Certified Mail this date to:

Richard I. Cole



Ken Hohl

OCT 27 2009

Dated