

SERVED: March 2, 1998

NTSB Order No. EA-4640

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 9<sup>th</sup> day of February, 1998

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14854
v.	)	
	)	
THOMAS AARVIK,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, rendered after an evidentiary hearing held on August 12-13, 1997.<sup>1</sup> By that decision, the law judge affirmed counts one and three of the Administrator's order of suspension and upheld revocation of

<sup>1</sup> An excerpt from the hearing transcript containing the initial decision is attached.

respondent's airman certificate.<sup>2</sup> We deny the appeal.

Respondent, who presented no evidence at his hearing, raises numerous procedural arguments in his appeal. Respondent's principal argument is that he did not have a sufficient opportunity to defend against the Administrator's charges, and he makes much of what he claims was a "grossly inadequate" period for discovery.<sup>3</sup> Respondent's Brief at 4. Respondent, however, fails to indicate, aside from generic argument, how he was actually prejudiced by the errors he alleges. Indeed, despite having had over three months since the conclusion of the hearing to thoroughly review the Administrator's discovery responses, to review his own case, and, indeed, to conduct additional investigation, respondent has yet to indicate what material he was unable to obtain during discovery, or to explain how he would have presented a better defense had he had additional time with which to prepare his case. Moreover, we note that respondent waited until July 7<sup>th</sup> before initiating any discovery, even though he appealed the Administrator's order of suspension on March 26<sup>th</sup>. And it was respondent, himself, who specified that

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<sup>2</sup> Counts one and three of the Administrator's complaint both set forth numerous allegations that, standing alone, warrant revocation. The law judge affirmed those counts, but did not uphold count two of the Administrator's complaint. The Administrator has not appealed that ruling.

<sup>3</sup> Respondent also claims that the law judge erred in denying his motions for a continuance. A decision on whether to grant a motion for a continuance is a matter committed to the law judge's discretion and, especially in light of respondent's apparent failure to make good use of his time, we perceive no abuse of that discretion.

the Administrator reply by August 6<sup>th</sup>, a mere six days before the scheduled hearing. Respondent's complaint that our discovery rules do not provide sufficient time, and that the Administrator's discovery response was untimely, is, under these circumstances, disingenuous.<sup>4</sup>

Respondent also claims, essentially, that the law judge's decision was not supported by the evidence. He argues that certain evidence was inherently incredible and that the Administrator should not have been allowed to rely on hearsay when other evidence may have been available. We disagree. The proffered evidence was relevant and satisfied the criteria for admissibility, and it was incumbent upon respondent to introduce any evidence he believed to be more probative. In any event, we find no instances where improper, prejudicial evidence was admitted over timely objection, and we will not entertain respondent's attempts to discredit the evidence already, and properly, evaluated and weighed by the law judge.<sup>5</sup>

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<sup>4</sup> Respondent's claim that he received some responses to discovery only the day before the hearing is not supported by the record. It appears that the discoverable material sought by respondent's second and third requests was previously supplied in the Administrator's first response.

<sup>5</sup> Respondent also contends that the law judge unduly limited his cross examination of Mr. Clayton W. Barnett, a flight crew member on board many of the flights at issue. The law judge, however, is expected to exert reasonable control over the order of a hearing, including the scope of cross examination, and we perceive no error in limiting respondent's counsel's questioning about a factually unrelated matter that would not appreciably contribute to any evaluation of the witness's credibility.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The initial decision, and the complaint as modified by the law judge, are affirmed.

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