

SERVED: August 14, 1998

NTSB Order No. EA-4685

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 7th day of August, 1998

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14740
v.	)	
	)	
ROCK ABOU-SAKHER,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent, appearing pro se, and the Administrator both appeal the initial decision of Administrative Law Judge William A. Pope, II.<sup>1</sup> By that decision, the law judge affirmed the Administrator's contention that respondent violated sections 91.13(a) and 91.119(a)-(c) of the Federal

<sup>1</sup> A copy of the law judge's written decision is attached.

Aviation Regulations ("FARs"), 14 CFR Part 91, but only as to one of two alleged instances of low flight by respondent.<sup>2</sup> The law judge, on account of his modification of the Administrator's order, reduced respondent's sanction from a 180-day to a 90-day suspension.<sup>3</sup> We deny both

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<sup>2</sup> FAR §§ 91.13 and 91.119 provide, in relevant part, as follows:

**§ 91.13 Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

\* \* \* \* \*

**§ 91.119 Minimum safe altitudes: General.**

Except when necessary to takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) *Anywhere.* An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

\* \* \* \* \*

<sup>3</sup> The Administrator's complaint alleged that respondent violated sections 91.13(a) and 91.119(a)-(c) during each  
(continued . . .)

appeals.<sup>4</sup>

The initial decision includes a detailed recitation of the evidence, but the essence of the Administrator's case is that, on one occasion, respondent flew over the scene of a fire at an altitude of approximately 150 feet, and, on another occasion, that he flew over persons and airport buildings at an altitude of 150 feet after making an early climbout on takeoff. The law judge affirmed the violations stemming from the first incident, but dismissed the violations associated with the alleged second incident.<sup>5</sup>

On appeal, respondent takes issue with the law judge's findings with respect to the Administrator's first alleged instance of low flight, the fire scene incident. Respondent's brief, however, merely argues his own interpretation of the evidence, and because we perceive no error in the law judge's evaluation of the evidence we will not disturb his factual findings.<sup>6</sup>

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(continued . . .)

alleged incident.

<sup>4</sup> The Administrator conditions her appeal of the law judge's modification of sanction on our reinstatement of at least one of the violations associated with the second alleged instance of low flight.

<sup>5</sup> The law judge found that respondent operated his aircraft at an altitude of 250-300 feet above the fire scene.

<sup>6</sup> Contrary to respondent's assertions, the record contains ample basis for the law judge's conclusion that the aircraft observed flying low over the fire scene was, indeed, respondent's aircraft. See, e.g., Transcript ("TR") at 482-  
(continued . . .)

The Administrator takes issue with the law judge's dismissal of her allegations regarding the second, or airport, incident. She disputes the law judge's conclusion that there was insufficient evidence that respondent failed to adhere to minimum safe altitudes, arguing that there was sufficient evidence to find violations of sections 91.13(a) and 91.119(c).<sup>7</sup> According to the Administrator, even though Mr. Edward "Mike" Wright -- the only witness to the alleged incident found by the law judge to have any credibility on the matter -- could not estimate respondent's altitude as he overflew him while he was standing in the airport terminal parking lot, his testimony nonetheless "established that [r]espondent . . . veered right before the departure end of the runway" and therefore that he violated section 91.13(a) and section 91.119(c). This argument, however, assumes that respondent's aircraft was operated closer than 500 feet to the surface, persons or structures.<sup>8</sup>

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(continued . . .)

485.

<sup>7</sup> Although the Administrator's appeal focuses on the section 91.13(a) and section 91.119(c) charges, her brief also notes that, with respect to the airport incident, respondent was also charged with violating sections 91.119(a) and (b). The Administrator appears to argue that the law judge did not expressly rule on those charges, but we think that it is quite clear from his decision that he rejected those allegations as well. In any event, we have reviewed the record and we do not think it supports such charges. See footnote 9, infra.

<sup>8</sup> In this regard, we think that, given the trigonometric  
(continued . . .)

The law judge, who observed all testimony on the issue, found otherwise, and the Administrator demonstrates no other reason for us to disturb his findings or conclusions.<sup>9</sup>

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(continued . . .)

realities of lines of sight, the Administrator makes too much of Wright's statement that he initially observed respondent's aircraft "just above the trees" immediately after takeoff, especially when Wright also testified that he observed respondent's aircraft "climbing about as hard as [it] could" and professed to being unable to estimate altitude with any degree of reliability. Similarly, although the FAA inspector who testified as an expert for the Administrator estimated, using standard performance criteria, that respondent's aircraft could have only reached an altitude of several hundred feet by the time it passed over the terminal building, he admitted to having no knowledge of the climb performance associated with the more powerful engine and climb propeller allegedly installed on respondent's aircraft.

<sup>9</sup> To the extent the Administrator argues that respondent's takeoff was grounds for an independent, as opposed to residual, finding of carelessness or recklessness, we disagree. Absent a showing that the aircraft was below 500 feet as it passed over airport structures or persons, in an area we deem from the record to be non-congested, and absent a showing that respondent's flight path actually decreased his chances of returning for a safe landing in the event of an engine failure, we are not persuaded that the record demonstrates respondent's takeoff to have been careless or reckless.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is denied;
2. Respondent's appeal is denied;
3. The initial decision is affirmed; and
4. The 90-day suspension of respondent's airman certificates, including his commercial pilot certificate, shall commence 30 days after the service date of this opinion and order.<sup>10</sup>

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

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<sup>10</sup> For the purposes of this order, respondent must physically surrender his airman certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).