

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

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JOHN L. McLUCAS, Administrator  
FEDERAL AVIATION ADMINISTRATION

v.

ROGER L. STEINER

Docket No. SE-3266

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SERVICE: Roger L. Steiner, Respondent, P. O. Box 7155,  
Kennewick, Washington 99336

Richard Salwen, Esq., Counsel for Administrator,  
Federal Aviation Administration, Northwest Region,  
Boeing Field, Seattle, Washington 98108

COPY OF ORAL INITIAL DECISION ISSUED ON OCTOBER 18,  
1976, IN SPOKANE, WASHINGTON, BY ADMINISTRATIVE LAW  
JUDGE WILLIAM E. FOWLER, JR.

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ORAL INITIAL DECISION OF WILLIAM E. FOWLER, JR.  
ADMINISTRATIVE LAW JUDGE

In a <sup>HAIR</sup> Safety Enforcement Proceeding as promulgated by the National Transportation Safety Board, a United States Administrative Law Judge has the option to either issue an oral decision immediately following the conclusion of the proceeding or to subsequently issue <sup>A</sup> written decision. I am going to issue an oral decision forthwith in this proceeding.

We have a case here, gentlemen, that is interesting from many angles. Now, because we have a series of offenses and convictions by the respondent involved, Mr. Roger L. Steiner, and because of those offenses with the subsequent convictions, in response to an application of August 29, 1975, that the respondent filed for a Second Class Medical Certificate, under Part 67 of the Federal Aviation Regulations, in answer to two questions on that application for a new medical certificate, question 21V and 21W, the respondent answered no. The Administrator filed a complaint dated

1 April 15, 1976, against respondent Steiner saying that as  
2 a result of those answers on his medical application of  
3 August 29, 1975, that those answers were intentionally  
4 false and fraudulent and that by reason of these circum-  
5 stances the respondent, therefore and thereby, violated  
6 Section 67.20A1 of the Federal Aviation Regulations in that  
7 he, the respondent, made fraudulent or intentionally false  
8 statements on an application for a medical certificate.

9 Now, in looking at the Administrator's order of  
10 revocation of April 15, 1976, there are five pertinent  
11 paragraphs there. The respondent has admitted to Paragraphs  
12 1 and 2 and has denied the allegations set forth in Para-  
13 graphs 3, 4 and 5. The first paragraph refers to the fact  
14 that the respondent is now and at all times has been the  
15 holder of a Commercial Pilot Certificate and a Second Class  
16 Medical Certificate, and the respondent admits these alle-  
17 gations.

18 The second paragraph states that on August 29, 1975,  
19 that the respondent applied in Richland, Washington, to an  
20 aviation medical examiner for a Second Class Medical Certi-  
21 ficate and that in that application the respondent stated  
22 that he had no record of traffic convictions or other  
23 convictions and that the respondent signed the application  
24 certifying that all statements and answers provided by him  
25 on the application were complete and true to the best of his

1 knowledge, to the best of the respondent's knowledge. The  
2 respondent has admitted that.

3 The respondent denies Paragraph 3 that says on or about  
4 January 14, 1975, through the U.S. District Court, Western  
5 District of Washington, Seattle, Washington, Case No.  
6 CR 74-346S, the respondent was convicted of failing to make  
7 an income tax return to the Internal Revenue Service. The  
8 respondent denies that Paragraph 3.

9 Paragraph 4 sets forth--

10 MR. STEINER: Correction, Your Honor, that would  
11 be denying it before the fact.

12 JUDGE FOWLER: Yes.

13 Paragraph 4 sets forth at least nine traffic offenses  
14 that the Administrator says the respondent was convicted of.  
15 The respondent denied that paragraph.

16 Paragraph 5 of the Administrator's complaint says the  
17 statements in certification described in Paragraph 2 above,  
18 which was made by <sup>respondent</sup> ~~you~~ in the application of August 29, 1975,  
19 were intentionally false and fraudulent.

20 So, gentlemen, we have had the testimony and evidence in  
21 this case, which consisted of three exhibits by the Admini-  
22 strator. Exhibit one of the Administrator is a record of  
23 traffic offenses that have occurred on the part of the  
24 respondent, ten traffic offenses taking place between  
25 October 10, 1968, and September 23, 1974. The exhibits set

1 forth what the offenses were and the court has heard the  
2 evidence pertaining to the offenses and the location of the  
3 court and the nature of the conviction.

4 Administrator's Exhibit No. 2 is, of course, the  
5 medical applications filed by the respondent for a renewal  
6 of his Second Class Medical Certificate, the latest being  
7 August 29, 1975, which is the one that is in question,  
8 going all the way back to April 21, 1962, so that the  
9 Administrator in his case, by these three documentary  
10 exhibits admitted into evidence, has shown that the  
11 respondent has been convicted of ten different traffic  
12 offenses between the years of October 1968 and September,  
13 1974. The Administrator, by his Exhibit No. 3, has shown  
14 that on January 24, 1975, the respondent was convicted of  
15 failing to make an income tax return to the Internal Revenue  
16 Service in the United States District Court of the Western  
17 District of Washington.

18 So that the issue here is not so much, as I see it, the  
19 offenses in question. Those offenses have been proven and  
20 set forth by the Administrator's evidence. The question to  
21 be decided here is whether or not on August 29, 1975, in  
22 his application to an aviation medical examiner for a  
23 Second Class Medical Certificate, under part 67 of the  
24 Federal Aviation Regulations, did the respondent in this  
25 proceeding, Roger L. Steiner, make intentionally false and

1 fraudulent statements by answering Item 21V and Item 24,  
2 those two questions, in the negative, by stating, writing  
3 no, whether those answers are intentionally false and  
4 fraudulent.

5 Well, we know that prior to May of this year the  
6 National Transportation Safety Board had repeatedly held  
7 in false statement cases of this type and scope that the  
8 knowledge of falsity is not a required element for an  
9 intentional false statement under Section 67.20A1 of the  
10 Federal Aviation Regulations. In other words, the prior  
11 rulings of the N.T.S.B. went on to say, in effect, that the  
12 making of such a statement, regardless of the knowledge on  
13 the part of the respondent at the time of making, that this  
14 statement was subsequently found to be false. Even if,  
15 under the prior rulings of the National Transportation Safety  
16 Board, even if the person who made the statement at the time  
17 did not know the statement to be false. This has been in  
18 prior hearings the holdings of the National Transportation  
19 Safety Board. Now, the United States Court of Appeals from  
20 the Ninth Circuit on May 5, 1976, in Hart vs. the Admini-  
21 strator, the United States Court of Appeals, Ninth Circuit,  
22 tells that a fair reading of the regulation indicates the  
23 requirement of scienter, that is, knowledge of falsity or  
24 liability on the part of the respondent.

25 Gentlemen, as I see it, this is what we have to look at

1 here to make a decision in this proceeding. The administrator's  
2 case consists of three exhibits, Administrator's Exhibit  
3 Nos. 1, 2 and 3, as a record of the aforesaid offenses. Now  
4 The Administrator's position is that because of so many of  
5 these offenses, and particularly because of the income tax  
6 offense, that this indicates a reckless disregard for the  
7 offenses that occurred where respondent Steiner is concerned  
8 and a reckless disregard for the truth on the part of the  
9 respondent. However, under the Hart case that I just alluded  
10 to, which was decided by the Ninth Circuit Court of Appeals  
11 in May of 1976, bearing the proof that a proceeding of this  
12 type is upon the Administrator to show knowledge of falsity.  
13 In other words, were these answers of "no" to question 21V  
14 and 21W on the medical application of August 29, 1975, did  
15 the respondent Roger L. Steiner know that his answer was  
16 false, and if he did know that it was false at the time he  
17 made it, did he put it down intentionally, knowing that it  
18 was false. In other words, did he possess scienter, a  
19 knowledge of the falsity of his answers?

20  
21 Now we've heard the respondent's testimony in this  
22 proceeding. The respondent has taken the position that the  
23 term conviction to him in his own mind, as he testified  
24 from the witness stand and also in response to this judge's  
25 question, that in the respondent's mind the term conviction  
meant after a trial by jury, it did not mean to the respondent

1 after an acceptance of a ~~guilty~~ guilty plea by a judge.  
2 The respondent repeatedly stated that he felt the only time  
3 a conviction came about during the course of a legal pro-  
4 ceeding was after a trial had been held and a jury had engaged  
5 in it's deliberations and subsequently made a finding of  
6 guilty. We may recall a series of specific questions that I  
7 put to the respondent. He did not feel that if there had been  
8 no trial before a jury or if there had not been a jury present  
9 after an ensuing trial that the mere finding by the judge alone  
10 with a mere acceptance of a guilty plea by the judge in the  
11 respondent's mind, at least in response to questions put  
12 to him during the course of this proceeding, that in and of  
13 itself in the respondent's mind is not enough to say there is  
14 a conviction in whatever offense was involved.

15 In addition to this, the respondent testified that  
16 when he filled out the medical certification form on  
17 August 29, 1975, that he was confused how to answer question  
18 21V and 21W, that he felt he could have answered it either  
19 yes or no, but he answered it no according to his testimony  
20 because he did not feel that a finding of guilty by our  
21 court for these traffic offenses and also the acceptance of  
22 a plea of guilty for failing to file an income tax return  
23 for the year 1975. According to the respondent's testimony,  
24 in his frame of mind, this in his opinion was not a  
25 conviction because he said there had never been a rendering

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of a verdict by a jury following a trial and this according to the respondent was not a conviction in his mind.

So obviously, gentlemen, what we have here is a misunderstanding, a lack of knowledge, of what in the respondent's mind at the time of August 29, 1975, constituted a conviction. As I alluded to earlier, the Administrator has to show a scienter, the knowledge of falsity, of the respondent's answer which he made in two places on the medical certificate in 1975, August 29th.

The Administrator takes the position that because of all of these offenses and the subsequent conviction, that for the respondent to answer no as he did on the application of August 29, 1975, that this is a reckless disregard for the offenses that occurred. Well, possibly so, but the question is, did the respondent at the time he filled out the application have knowledge that the answer of no was a false answer, did he have knowledge that this was a false statement. We all know the statement was false, but that's not the issue here. The issue here is, when he made the answer, did he, the respondent, know that the answer was false. The respondent's testimony is that no, he did not know that it was false because he did not believe that he had been convicted, he did not believe in his own mind, the respondent did not believe, and therefore he feels that this was not a false statement and certainly not an intentionally

1 false statement as he answered it on that medical application  
2 of August 29, 1975.

3 Having carefully observed the demeanor of the respondent  
4 on the stand here today, and after putting a series of  
5 questions to him and also taking into account the questions  
6 put to him by the counsel for the Administrator, I am  
7 persuaded to accept the respondent's testimony describing  
8 his state of mind when he filled out the medical application.

9 Of course it goes without saying that all of these  
10 offenses the Administrator has put into evidence are, in  
11 fact, convictions, but in the mind of the respondent, as  
12 he's testified, he did not so believe because in none of  
13 these convictions, none of these cases, as the respondent  
14 testified, was there a jury trial following which a  
15 conviction was returned, which at the time the respondent  
16 thought that this was the only way that a valid conviction  
17 could lie.

18 Now, I feel that the statements, based on the evidence  
19 and the testimony made by the respondent on these two items,  
20 were false, of that there can be no question, but I don't  
21 feel, taking all the evidence and exhibits into consideration,  
22 that the respondent had knowledge of such falsity at the time  
23 he made the statements or that the Administrator has success-  
24 fully proven that the respondent made these statements and  
25 that at the time he made them he made them with the specific

1           It is my conclusion, therefore, that the complainant  
2 in this case has failed to show by the preponderance of the  
3 evidence that the respondent violated Section 67.20A1.

4           In addition, I should point out that the record indicates  
5 that the judge pointed out to the respondent while he was  
6 on the witness stand that a conviction is indicative of and  
7 represents a final judgment by a court of common juris-  
8 diction, whether or not there is a jury present, whether or  
9 not there is an actual trial, if, in fact, there has been  
10 no name on it. The plea of guilty entered by the defendant,  
11 the Court in question has accepted that plea and rendered a  
12 final judgment as a result of the acceptance of the plea of  
13 guilty, and, of course, that would mean a conviction by the  
14 Court based on the acceptance of that guilty plea. With  
15 this understanding reported by this judge to the respondent,  
16 Mr. Roger L. Steiner, said that if he had to fill out such  
17 a medical application today or tomorrow as he filled it out  
18 on August 29, 1975, that he now would answer the questions  
19 21V and 21W, he would now answer those questions in the  
20 affirmative. In other words, he'd write the answers to those  
21 questions "yes" rather than "no" because he is now fully  
22 cognizant of what the term conviction means and he sees the  
23 repair of his ways in his prior interpretation as to what  
24 the term conviction meant prior to this time.

25           So I will make the following findings and order. Upon



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S.W., Washington, D.C., 20594. If no appeal to the board from either party is received or if the board does not file a motion to review the judge's oral initial decision within the time allowed, then the initial decision shall become final. Timely filing of such an appeal, however, shall stay the order of the judge's oral initial decision.

The Administrator has made as a component part of his case that there was a reckless disregard for the offenses charged against the respondent, that is, the traffic offenses and the offense of failing to file the income tax return for the year 1974. Let the record further show that by the pleadings, particularly Paragraph 2 of the Administrator's order of revocation, the respondent has admitted all of these offenses, but based on the evidence and the exhibits in this case, knowledge of falsity by the respondent answering no to the two questions, questions 21V and 21W of the medical application of August 29, 1975, that the issue at hand is whether when respondent answered those questions he knew his answer was false, and if he did so know that the answers were false, did he make that false answer intentionally? In other words, was there the requisite *knowledge* ~~of~~ of scienter?

It is my finding that he did not have the knowledge, the requisite knowledge, of falsity, in other words, the scienter, because in his own mind, as he's testified to, he

*A. P. C.*

1 did not believe those offenses according to his reasoning  
2 constituted convictions. He admitted the offenses but not  
3 the convictions. He did not disregard the offenses as he  
4 admitted all those by admitting allegations as central  
5 in the Administrator's Paragraph 2 of the Administrator's  
6 order of revocation of April 15, 1976.

7 Let the record indicate that, during his final argument,  
8 counsel for the Administrator has raised the issue that  
9 because of the innumerable offenses incurred here by the  
10 respondent and over a period of some six to seven years,  
11 that because in his own mind because of the many offenses  
12 that the respondent has thus committed a reckless disregard  
13 for the offenses occurred and that therefore and thereby  
14 ignore the possibility that there was the chance or pos-  
15 sibility of conviction that he should have felt that he had  
16 received convictions from some or all these offenses.

17 Let the record indicate, however, that because of the  
18 respondent's admissions and admitting the allegations of  
19 Paragraph 2 of the Administrator's order of revocation of  
20 April 15, 1976, coupled with the Administrator's testimony  
21 in this proceeding, that it is not this judge's feeling  
22 either that the respondent disregarded in any way, let alone  
23 recklessly, the offenses that he had incurred over this  
24 seven-or eight-year period of time or that as a result  
25 thereof, and thereby based on the respondent's mental

1 processes, as to how he testified, as to what meaning and  
2 interpretation he had prior to today's proceeding, as to  
3 what the term conviction meant, and that the respondent  
4 should have known by sheer number of the offenses here that  
5 he had sustained some conviction or convictions. I do not  
6 feel that the evidence warrants this nor do I extract that  
7 interpretation from the evidence. I state again that it is  
8 my finding and determination here that the Administrator  
9 has not successfully proven by fair and reasonable pre-  
10 ponderance of the substantial, credible proof of evidence  
11 scienter on the part of the respondent, i.e., knowledge of  
12 falsity at the time he made the answers to the two questions  
13 on the medical certificate, 21V and 21W, on August 29, 1975.

14 Let the record indicate neither side has at this time  
15 contemplated filing a notice of appeal from the judge's oral  
16 initial decision.

17 Gentlemen, if there is nothing further at this time, I  
18 would declare this hearing closed.

19 Before I do so on the record, though, I want to thank  
20 both sides for their help, cooperation and participation in  
21 this proceeding. Thank you all very much.

22 (Whereupon, at 12:20 p.m., the hearing was closed.)  
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*Edited*  
*W. E. H. Jr.*  
*12/1/75*