

Federal Court affirms sanction of pilot

The United States Court of Appeals for the District of Columbia recently affirmed an administrative law judge's (ALJ) decision to affirm the Federal Aviation Administration's (FAA) revocation of a pilot's medical and pilot certificates. At trial the court found that the pilot falsely stated that he had never been arrested for drunk driving when applying for this pilot and medical certificates.

After the ALJ upheld the FAA's revocation order, the National Transportation Safety Board (NTSB) affirmed the law judge's decision, and the pilot petitioned to the court of appeals. The court of appeals explained that in June 2011, the pilot submitted an application for a medical certificate using the FAA's online system. The application required the pilot to answer a series of questions, including whether he had a history of "any arrest(s) and/or conviction(s) involving driving while intoxicated." The pilot answered "no." In fact, he had been arrested by the California Highway Patrol (although not convicted) for drunk driving in 2008.

On September 12, 2011, the FAA notified the pilot that it had learned of his "alcohol-related motor vehicle incident" and was conducting an investigation into whether he had submitted an "intentionally false statement on any application for a medical certificate." The FAA gave the pilot ten days in which to submit evidence or written statements. On November 9, 2011, it issued an emergency order revoking the pilot's medical and pilot certificates.

At the hearing before the ALJ to reverse the emergency revocation order, the pilot did not deny that he gave a false answer. He claimed, however, that he did so only because he had failed to read the question carefully. He testified that he did not realize that question had been expanded, in the years since his previous medical certificate application, to include drunk-driving arrests (as opposed to convictions). He thus clicked a "button" on the application and then submitted the form without reading the text of the questions.

The ALJ did not find the pilot's testimony credible. To the contrary, he found it unbelievable that, "after having been arrested[,] a pilot of his experience [and] intelligence, would not read the form to determine if his arrest would in any way affect the application." Moreover, the ALJ agreed with the FAA that the pilot had violated the regulations prohibiting false statements, even according to his own testimony. Under the FAA's established interpretation of the regulation, "where an airman intentionally chooses not to carefully read the question for which he is providing an answer that he certifies by his signature to be true, a factfinder can infer 'actual knowledge' from a willful disregard for truth or falsity." Accordingly, "[a] defense of deliberate inattention fails where the applicant is attesting to events about which he has actual knowledge." *Id.*

The ALJ found that, in light of this standard, he "ha[d] to agree with the [FAA]" that the pilot "hung himself" "through his own testimony." The ALJ agreed with the FAA that the pilot had violated the regulation.

On appeal, the court affirmed the FAA's revocation decision. The recently enacted Pilot's Bill of Rights (PBR) amended applicable provisions to this case relating to the type sanction issued, but was not material to the outcome of the case and the court noted that the amended provision PBR does not apply retroactively.

If you have any questions concerning this article, do not hesitate to contact Chris Denison at 678-367-8672, cdenison@denisonandassociates.com

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