

SERVED: September 12, 2013

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

Application of

[REDACTED]

for an award of attorney fees and related expenses under the Equal Access to Justice Act (EAJA).

Docket [REDACTED]

SERVICE:

[REDACTED]

Michael W. Pearson, Esq.
Curry, Pearson, and Wooten, PLC
814 West Roosevelt Street
Phoenix, AZ 85007-2105
(Certified Mail and Priority Mail)

Adam Runkel, Esq.
FAA Western-Pacific Region
P.O. Box 92007
Worldway Postal Center
Los Angeles, CA 90009-2007
(Priority Mail)

ORDER GRANTING ATTORNEY FEES AND EXPENSES

Pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, et. seq., and the National Transportation Safety Board Rules implementing the EAJA, 49 C.F.R., § 826.1 et. seq., hereafter referred to as the Board's Rules, this application comes before the National Transportation Safety Board ("the Board") for an award of attorney fees and other expenses against the Federal Aviation Administration (FAA), an agency of the United States. The

application and supporting documents filed by the Applicant establish that he meets the eligibility requirements set out in the EAJA and the Board's EAJA rules, and the application is both timely-filed and procedurally correct.

Statement of the Case

In November, 2011, Judge Geraghty issued an Order Sustaining Summary Judgment in this matter. Specifically, he found Applicant was in regulatory violation of 14 C.F.R. § 91.405(a) and (b) and §91.13 for operating a Cessna C560 Aircraft between Phoenix Sky Harbor International (PHX Airport (PHX) and Williams Gateway Airport (IWA) after there had been a gear extension failure on arrival at PHX. The flight cited was done with the landing gear extended and without a ferry permit. As a result, Judge Geraghty entered a 50-day suspension of Applicant's Airline Transport Pilot (ATP) certificate.

The Board reversed Judge Geraghty's Order of Summary Judgment and remanded the case for a "full and complete hearing", and further stated that "the Administrator has the burden of fully proving the allegations set forth in the complaint." Administrator v. Gibbs, NTSB Order No. EA-5638 (Sept. 27, 2012). The case was subsequently assigned to the undersigned for trial.

That trial was scheduled for hearing at 9:00 a.m. on April 23, 2013, in Phoenix, and at that hearing when the Administrator was directed to call his first witness, counsel for the Administrator declined to put on any evidence. As a result, the undersigned issued an Order on the record finding for Applicant. The Administrator then appealed that Order to the Board and subsequently withdrew that appeal, and the Board entered a final judgment for this Applicant.

[REDACTED] (June 3, 2013).

The Applicant then filed this application dated July 3, 2013, and received in the Office of Administrative Law Judges (OALJ) on July 9, 2013, seeking attorney fees and expenses in the amount of \$35,275.89.

Board's rule 826.32(a) provides that:

Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless Agency counsel requests an extension of time for filing, or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer

within the 30-day period may be treated as a consent
to the award requested.

The Administrator's counsel has not filed an answer to this application, and the failure to
file that answer will be treated as a consent to the award requested.

The Award

Applicant's application for attorney fees and expenses in the amount of \$35,275.89 is,
therefore, **AFFIRMED**.

And it is SO ORDERED.

Entered and served this 12th day of September, 2013, at Washington, D.C.

A handwritten signature in black ink, appearing to read 'W R Mullins', is written over a horizontal line.

William R. Mullins

Administrative Law Judge