

4 - JUN - 2
COPY 10 1977

SERVED: April 27, 1977

NTSB Order No. EA-998

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

Issued under delegated authority (49 CFR 800.24)
on the 18th day of April 1977

QUENTIN S. TAYLOR, Acting
Administrator, Federal Aviation
Administration,

Complainant,

v.

THEODORE ALLEN LaBELLE,

Respondent.

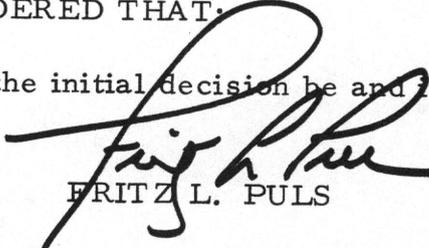
Docket SE-3446

ORDER DISMISSING APPEAL

Respondent, through counsel, filed a notice of appeal from the initial decision of Administrative Law Judge Jerrell R. Davis. By letter dated April 12, 1977, respondent has advised that he does not intend to pursue the appeal and that no further pleadings will be filed.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's appeal from the initial decision be and it hereby is dismissed.

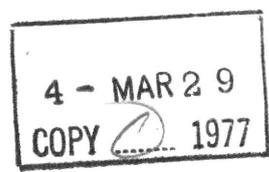

FRITZ L. PULS

[SEAL]

NATIONAL TRANSPORTATION SAFETY BOARD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

----- :
John L. McLucas, Administrator, :
Complainant, :
vs. :
Theodore Allen LaBelle, :
Respondent. :
----- :



Docket No. SE-3446

Richard G. Wittry for Complainant.
Pierre E. Auw for Respondent.

INITIAL DECISION AND ORDER

Jerrell R Davis, Administrative Law Judge:

On December 2, 1976, Complainant issued an Emergency Order revoking Respondent's Student Pilot ^{and} Airman Medical Certificate.

Alleged violations of the following sections of the Federal Aviation Regulations (FAR) are the bases for revocation:

(a) Section 61.87(b), in that Respondent, a student pilot, operated an aircraft in solo flight without having his student pilot certificate endorsed and his pilot log book endorsed within the preceding 90 days of said flight by an authorized instructor who had given him instruction in the make and model of aircraft to be used, found that he was competent to make a solo flight in that aircraft, and he had met the

1 requirements of Section 61.87;

2 (b) Section 91.79(a), in that when it was not
3 necessary for take off or landing, Respondent operated an
4 aircraft below an altitude which, if a power unit had failed,
5 would have allowed an emergency landing without undue hazard
6 to persons or property on the surface;

7 (c) Section 91.79(b), in that when it was not
8 necessary for take off or landing, Respondent operated an
9 aircraft over a congested area of a city, town or settlement,
10 or over an open air assembly of persons below an altitude of
11 1000 feet above the highest obstacle within a horizontal
12 radius of 2000 feet of the aircraft;

13 (d) Section 91.79(c), in that when it was not
14 necessary for take off or landing, Respondent operated an
15 aircraft over other than a congested area, below an altitude
16 of 500 feet above the surface and closer than 500 feet to a
17 person, vehicle or structure;

18 (e) Section 91.87(h), in that, at an airport having
19 and operating control tower, Respondent taxied an aircraft on
20 a runway or took off or landed an aircraft, when he had not
21 received an appropriate clearance from Air Traffic Control;
22 and

23 (f) Section 91.9, in that Respondent operated an
24 aircraft in a careless or reckless manner so as to endanger
25 the life or property of another.

1 Respondent appealed the Emergency Order of revocation
2 and orally waived applicability of the Emergency Rules in favor
3 of the non-Emergency Rules. The Emergency Order was subsequent-
4 ly filed and served as the complaint in this proceeding pursuant
5 to the provisions of Section 821.31 of the Board's Rules of
6 Practice in Air Safety proceedings.

7 The facts alleged in the complaint giving rise to the
8 alleged violations are as follows:

9 1. Respondent is the holder of Student Pilot and
10 Third Class Airman Medical Certificate No. AA4692749.

11 2. At about 11:00 a.m. PST, on November 30, 1976,
12 Respondent operated civil aircraft N1093Q, a Cessna Model 310,
13 a multi-engine aircraft, the property of another, as pilot-in-
14 command, taking off from Long Beach Municipal Airport, Long
15 Beach, California, without any air traffic control clearance
16 from the airport ATC tower.

17 3. Thereafter, during the period from 11:00 a.m.
18 to 12:23 p.m., Respondent operated N1093Q so as to buzz
19 residential areas of Seal Beach and Long Beach, operating at
20 altitudes of 150 feet AGL or less, centering the passes about
21 the residence of Mrs. Marjory Sterling of Seal Beach.

22 4. Prior to the aforesaid flight, on the morning
23 of November 30, 1976, Respondent verbally threatened to commit
24 suicide. The threat was also repeated to the ATC tower personnel
25 while Respondent was in flight.

1 **5. v.** During the flight, Respondent repeatedly declined
2 to respond to requests from Air Traffic Control personnel, Long
3 Beach Tower, and from family members brought to the Tower, to
4 discontinue the buzzing, although his microphone was "keyed"
5 to the ATC radio.

6 **6. vi.** Due to the numerous passes, and in light of the
7 foregoing, Seal Beach firemen and police officials evacuated
8 a residential area of the city, including a school yard.

9 **7. vii.** Respondent attempted to ram in mid-air a police
10 helicopter which was following his airplane.

11 **8. viii.** Respondent carried a loaded shotgun in the air-
12 plane during the flight. Officers report that Respondent fired
13 two rounds from the weapon in flight, apparently at the police
14 helicopter.

15 **9. ix.** Respondent landed in a field of the U.S. Naval
16 Weapons Station at Long Beach at about 12:23 p.m., and surren-
17 dered to police.

18 **10. x.** At the time of the aforesaid flight, Respondent's
19 student pilot certificate had not been endorsed by a certificated
20 flight instructor who had given Respondent flight instruction
21 in Cessna Model 310 airplanes, and made those determinations
22 required by Section 61.87(d)(1)(2)(3) of the FAR.

23 **11. xi.** Respondent's operation of the aircraft N1093Q
24 in the matter and under the circumstances described above was
25 careless and reckless so as to endanger the life or property

1 of another, and Respondent failed to exercise the degree of
2 care, judgement and responsibility required of the holder of
3 a student pilot certificate.

4 ~~12. III.~~ At this time, based on the foregoing, a sub-
5 stantial question exists as to whether Respondent meets the
6 medical standards required by Part 67 of the FAR, to include
7 Sub-section (d)(1)(ii) of Section 67.17 thereof.

8 Respondent filed and served an answer to the complaint.
9 He admitted paragraphs 1, 2, 3, 4, 6, 9 and 10 of the complaint,
10 as restated above. He denied paragraphs 5 and 7. With respect
11 to paragraph 8, he admitted that a shotgun was carried in the
12 airplane during flight. He denied, however, that the gun was
13 loaded and denied that any rounds were fired therefrom while
14 in flight ^o at the police helicopter. He neither admitted or
15 denied paragraphs 11 and 12, which appear to be conclusionary
16 in form.

17 A de novo hearing on the appeal was heard today in
18 Los Angeles, California, Complainant declined to offer any
19 evidence, contending that Respondent's admissions leave no
20 substantial fact controversy.

21 Respondent took the stand to give his version of the
22 facts alleged in paragraphs 5, 7 and 8. He stated that he made
23 no attempt to establish radio contact with the Long Beach Tower
24 during the first 10 minutes of flight. He testified that he
25 acknowledged an instruction from the tower to discontinue low

1 flying, but^o that he did not comply with such instruction. He
2 conceded that the instruction could have been repeated and
3 that no response was made thereto^o because he had turned down
4 the volume on his receiver. Also, at times, he said he was
5 beyond the range of the tower.

6 He conceded that at least three passes were made
7 towards the police helicopter and that his aircraft passed
8 within 20 to 30 feet of the helicopter. He stated, however,
9 that he had no intent to ram the helicopter. He merely wished
10 to attract or draw attention of the occupants in the helicopter
11 and get their reaction to his suicidal antics.

12 Respondent concedes that he carried a shotgun aboard
13 the aircraft and shells therefor^f, but^o he contends that the
14 shotgun was not loaded while aboard the aircraft. After
15 landing the aircraft, Respondent loaded the gun and fired one
16 shell into the ground. A second shot was discharged into the
17 air at birds. A third shot was fired while Respondent was in
18 a sitting position and the gun was across his lap.

19 In my judgement, Respondent, by his own testimony,
20 has generally substantiated the allegations in paragraph 5 and
21 7 of the complaint. Since he ignored an instruction to dis-
22 continue low flying, the compelling inference is that such
23 instruction was repeated. The fact that he turned down the
24 volume on his receiver or got beyond the range of the tower is
25 non-exculpatory.

1 The helicopter was hovering at the time of the passes.
2 The pilot of the helicopter, not being able to read the mind
3 of the Respondent, was compelled to take evasive action to
4 prevent what appeared to be a certain mid-air collision. In
5 the absence of other testimony, it must be concluded that the
6 shotgun was not discharged while Respondent was airborne and
7 that such gun was not aimed at the police helicopter.

8 Findings and Order

9 Upon consideration of all evidence of record, in-
10 cluding admissions in Respondent's answer, I find that (1)
11 with the exception of paragraph 8, all material facts in the
12 complaint have been established, showing that Respondent
13 violated the sections of the FAR cited therein, and (2) safety
14 in air commerce or air transportation and the public interest
15 require affirmation of the Complainant's Emergency Order of
16 Revocation.

17 It is ordered, That Complainant's Emergency Order
18 of Revocation be, and it is hereby, affirmed.

19 Dated at Los Angeles, California, this 11th day of
20 February, 1977.

21
22
23 EJL:td
24 3/7/77

25

Jerrell R. Davis

Administrative Law Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Appeal

from
Appeal of the decision and order herein may be made by filing with the National Transportation Safety Board, Docket Section, 800 Independence Avenue Southwest, Washington, D. C., 20594, and serving upon the other party a notice of appeal within 10 days from today, perfected by the filing and serving of a brief in support thereof within 40 days from today.

The procedure on appeal is set forth in detail in Sections 821.43, 821.47, and 821.48 of the Board's Rules of Practice in Air Safety Proceedings.

JUDGE DAVIS: Off the record.

(Brief recess.)

JUDGE DAVIS: Back on the record. There being no further matters to come before the bench in this proceeding, I declare this hearing closed.

(Whereupon, the hearing was adjourned at 11:58 a.m., February 11, 1977.)

SERVICE:

Theodore A. Labelle, Respondent
c/o Pierre E. Auw
BAKER, BEGAN & AUW
3610 Long Beach, Blvd.
Long Beach, CA 90807

Pierre E. Auw, Esq.
Counsel for Respondent
BAKER, BEGAN & AUW
3610 Long Beach, Blvd.
Long Beach, CA 90807

Richard G. Wittry, Esq.
Counsel for Administrator
Federal Aviation Administration
Western Region - P. O. Box 92007
Worldway Postal Center
Los Angeles, CA 90009

COPY OF ORAL INITIAL DECISION ISSUED ON FEBRUARY 11, 1977,
IN LOS ANGELES, CALIFORNIA BEFORE ADMINISTRATIVE LAW JUDGE
JERRELL R. DAVIS