

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

THOMAS KILRAIN

FAA Order No. 96-23

Served: August 13, 1996

Docket No. CP94NE0268

ORDER DENYING PETITION TO RECONSIDER

Respondent Thomas Kilrain has petitioned for reconsideration of the Administrator's decision in this matter, FAA Order No. 96-18, which was served on May 3, 1996. In FAA Order No. 96-18, the Administrator affirmed the law judge's finding that Mr. Kilrain had violated 14 C.F.R. §§ 43.5(a) and 43.15(a)(1). Mr. Kilrain states in his petition for reconsideration that he wants "[t]o submit newly obtained evidence." As will be explained further, Mr. Kilrain has not demonstrated that reconsideration is warranted.

Section 13.234 of the Rules of Practice in FAA Civil Penalty Actions, 14 C.F.R. § 13.234, provides that any party may petition the Administrator to reconsider a final decision and order. The party seeking reconsideration is required to explain specifically in the petition the alleged errors in the final decision, the relief sought, and the grounds in support of the petition. 14 C.F.R. § 13.234(c). Furthermore, when the party seeking reconsideration bases the petition upon new material not presented during the prior proceedings, then "the party shall set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party

shall explain, in detail, why the new material was not discovered through due diligence prior to the hearing." 14 C.F.R. § 13.234(c)(2).

Mr. Kilrain has failed to satisfy the requirements of 14 C.F.R. § 13.234(c). He has not explained what errors he believes were made by the Administrator in FAA Order No. 96-18. While Mr. Kilrain has stated that he wants to submit newly obtained evidence, he has neither submitted any new material nor even explained the nature of the new evidence or what he believes that evidence would prove. He has provided no affidavits to authenticate this unidentified evidence. Finally, he has failed to provide *any* explanation for why he did not obtain and introduce that evidence at the hearing, and therefore, he certainly has not shown that despite diligent efforts, he was unable to obtain this evidence prior to the hearing.

Consequently, Mr. Kilrain has failed to demonstrate that any additional proceedings for the introduction of new evidence is justified or that it is likely that the outcome of the Administrator's decision, FAA Order No. 96-18, would be changed if this unidentified additional evidence were now presented for consideration.

Based upon the foregoing, Mr. Kilrain's petition for reconsideration is denied.



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 12th day of August, 1996.