

that Respondent served as a check airman in a Part 135^{3/} training program without having completed the proficiency or competency checks required to serve as pilot in command. The law judge affirmed the \$500 civil penalty sought in the complaint. For the reasons set forth below, this matter is remanded to the law judge for further proceedings.

Respondent did not appear at the October 15, 1991, hearing. On September 18, 1991, Respondent had requested a continuance "...to start FAA training course No. 21609 at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma on October 15, 1991." Attached to his request for a continuance was a note from Frank Benedict, FAA Flight Standards District Office (FSDO) Supervisor in Seattle, Washington. Mr. Benedict's note, in its entirety, read "[t]his is to verify that Paul B. Haggland Jr. is scheduled for mandatory training in Oklahoma City starting October 15, 1991."

Complainant objected to a continuance arguing that Respondent had known since mid-July that the hearing had been scheduled for October 15, 1991. Complainant argued that Respondent had not explained why the FAA course was mandatory, and what effect his non-attendance would have on his employment. Respondent, according to Complainant, had also not explained why he could not attend similar training

^{3/} Part 135 refers to Part 135 of the FAR, 14 C.F.R. § 135.1 et seq. Part 135 contains regulations pertaining to air taxi operators and commercial operators.

in the future. Complainant's argument did not address the note from FSDO Supervisor Benedict.

The law judge denied Respondent's request to reschedule the hearing. He found that Respondent had not shown good cause for a continuance for the reasons advanced by Complainant.

The record in this case is unclear. As the law judge wrote, Respondent failed to adequately explain his reasons for seeking the continuance. It is not clear from the record in what manner the training course was "mandatory", or why Respondent could not simply take the course another time.^{4/}

Although the FSDO Supervisor's note did not itself justify a continuance, attendance at a mandatory FAA safety course, when adequately explained and timely raised, should be a valid reason for rescheduling a hearing. In contrast, if an airman's continued exercise of the privileges of his certificate and ratings is not conditioned upon taking an FAA course scheduled for the same day as the hearing, then a continuance may be inappropriate. If, in this case, the course was mandatory and no similar course was soon available, then Respondent was forced to choose between FAA training required by his employment, and defending himself against FAA

^{4/} Complainant's opposition to Respondent's request is troubling. At the very least Complainant could have looked into the necessity of this course to Respondent's employment, and informed the law judge of whether the course was indeed essential. If that turned out to be the case, Complainant should not have opposed the request for continuance.

charges at a hearing. The law judge made his decision not to reschedule the hearing in this case without having sufficient information as to the reason for Respondent's request for a continuance. Law judges do indeed encounter difficulties in scheduling hearings, and they need to make decisions based on the record before them. Law judges also need to have wide discretion in exercising their authority to schedule hearings under Section 13.221 of the Rules of Practice (14 C.F.R. § 13.221). In this case, however, the law judge should have sought additional information from Respondent before ruling on his request to continue the October 15th hearing. If Respondent did not submit clarifying information, or if he still failed to show good cause for the continuance, then the law judge could have denied the request and held the hearing as scheduled.^{5/}

Respondent should have a further opportunity to explain to the law judge why his request to reschedule the October 15th hearing should have been granted. The law judge may then determine whether Respondent had good cause for his request to reschedule the hearing. If the law judge finds after further inquiry that a continuance was not warranted, he should reissue his initial decision on the merits, incorporating in it his decision on the continuance.

^{5/} This case is troubling because it is possible that the law judge would have reached a different decision if Respondent had appeared to give testimony at the hearing. No witnesses testified on Respondent's behalf, other than his non-attorney representative, who did not have personal knowledge of the facts.

Respondent may then appeal that decision to the Administrator, if he so desires. If the law judge finds that Respondent establishes good cause for rescheduling the hearing, he should schedule a new hearing on the merits.

Accordingly, this matter is remanded to the law judge for further proceedings in accordance with this Order.



BARRY LAMBERT HARRIS
Acting Administrator
Federal Aviation Administration

Issued this 14th day of April, 1992.