

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of:**

**CALIFORNIA HELITECH**

FAA Order No. 2000-18

Served: August 11, 2000

Docket No. CP98WP0035

**DECISION AND ORDER<sup>1</sup>**

Respondent California Helitech has appealed from the written initial decision issued by Administrative Law Judge Burton S. Kolko on June 4, 1999.<sup>2</sup> In that decision, the law judge held that California Helitech violated Sections 91.405(a) and (b)<sup>3</sup> of the Federal Aviation Regulations (FAR), 14 C.F.R. §§ 91.405(a) and (b), by operating two helicopters with open maintenance discrepancies. The law judge assessed a \$2,200 civil penalty.

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<sup>1</sup> The Administrator's civil penalty decisions are available on LEXIS, Westlaw, and other computer databases. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, *see* 65 Fed. Reg. 47,557, 47,573-47,574 (August 2, 2000).

<sup>2</sup> A copy of the law judge's initial decision is attached.

<sup>3</sup> Section 91.405 of the FAR provides as follows:

Each owner or operator of an aircraft –

- (a) Shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter;
- (b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service.

After review of the record and the briefs filed in this matter, California Helitech's appeal is denied in part and granted in part. The law judge's findings of violations of Sections 14 C.F.R. §§ 91.405(a) and (b) as well as the assessment of a \$2,200 civil penalty are affirmed.<sup>4</sup>

California Helitech of Riverside, California, was a helicopter pilot school certificated under Part 141 of the FAR, 14 C.F.R. Part 141. On March 19, 1997, FAA maintenance inspectors performed routine surveillance at Brackett Airport. When the inspectors were in California Helitech's office, they noticed discrepancy sheets on the wall for two Robinson R-22 helicopters, N409FL and N4003S. (Tr-20-22.) Discrepancy sheets are also known as "squawk" sheets. Both of the squawk sheets indicated that each aircraft had open or uncleared discrepancies because there were no indications that any maintenance had been performed regarding the listed discrepancies. (Tr. 23.)<sup>5</sup> Nonetheless, both helicopters were operated that day. (Tr. 21, 23.) Each helicopter departed with a flight instructor and a student. (Tr. 23, 37.) The FAA inspectors did not have an opportunity to speak to the pilots about these discrepancies before the helicopters took off. (Tr. 42.)

The discrepancies listed for N409FL were as follows: worn tail rotor bearings; one worn main rotor bearing; an oil leak; and an airscoop chafing the exhaust. Complainant's Exhibit 1. The discrepancies listed for N4003S included a manifold pressure gauge that was "very slow to respond to changes in engine power" and "a pronounced vibration" when the helicopter was in forward flight, indicating a "possible

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<sup>4</sup> Any arguments raised by California Helitech in its appeal brief but not addressed specifically in this decision have been considered and rejected.

<sup>5</sup> See Complainant's Exhibits 1 and 2.

main rotor out of track.” Complainant’s Exhibit 2.<sup>6</sup> The inspectors considered these to be significant discrepancies “that if not corrected ... could be detrimental to the operation of the aircraft.” (Tr. 22.) These discrepancies had been entered on the squawk sheets at various times in February and March 1997.

No one from California Helitech’s management was present during the inspectors’ visit. The inspectors spoke with a student, who, they believed, contacted someone in management. According to Inspector Magill, the student informed them that management said that the problems would be corrected. (Tr. 23.)

In his written initial decision, the law judge explained that Section 91.405(a) provides that discrepancies shall be repaired between required inspections, although no maintenance is necessary if deferred properly under a Minimum Equipment List (MEL). He noted that no MEL applied to this helicopter. He explained further that Section 91.405(b) requires that an authorized person approve an aircraft for return to service before it is operated again. However, he held, California Helitech flew the aircraft with open squawks. The required maintenance was not performed, and the aircraft were not signed off as approved for return to service prior to operation. Hence, he held, California Helitech violated Sections 91.405(a) and (b). (Initial Decision at 2-3.)

The law judge also held that neither aircraft was airworthy<sup>7</sup> when the inspectors observed them operate because the aircraft did not conform to their type designs. (Initial Decision at 3.)

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<sup>6</sup> The squawk sheet for N4003S also indicated that there were problems with the left and right intercom switches.

<sup>7</sup> “To be airworthy, an aircraft must 1) conform to a type design approved under a type certificate or supplemental type certificate and to applicable Airworthiness Directives and 2) be in a condition for safe operation.” In the Matter of Emery Worldwide Airlines, Inc., FAA Order No.

The law judge rejected California Helitech's contention that the squawk sheets should not be considered as maintenance records. (Initial Decision at 4.) Regarding the need for an operator to have discrepancies resolved promptly before the next flight, the law judge wrote:

Some discrepancies, in fact, may pose a substantial risk of danger, such as the note regarding worn bearings. Others may pose relatively less hazard, or even appear innocuous. But it cannot be too strongly stressed that none may be dismissed without proper evaluation before flight. The FARs require it, and sound policy and safe skies demand it. The answer to Respondent's implicit contention that to investigate a discrepancy written up by a poorly informed student or by a "white knuckler" (an excessive worrier) is not required or may prove unduly burdensome is simply that every discrepancy must be addressed.

(Initial Decision at 4-5.)

The law judge also rejected California Helitech's contention that the pilot is the final authority on whether an aircraft is safe to operate and that if the pilot, after conducting a pre-flight inspection, determines that an aircraft can be flown, then no maintenance is necessary. The law judge wrote: "Discrepancies were noted on Respondent's squawk sheets, and discrepancies must be cleared before flight. A pilot's duties and responsibilities are a separate matter." (Initial Decision at 5.) Moreover, he reasoned, pilots can only perform preventive maintenance and the discrepancies listed on the squawk sheets in this case could not be categorized as preventive maintenance. (*Id.*) The law judge explained further that even if the discrepancies listed on the squawk sheets could be considered as requiring no more than preventive maintenance, then nonetheless there would have been a violation of Section 91.405(b) because proper entries reflecting

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97-30 at 17, *quoting In the Matter of Kilrain*, FAA Order No. 96-18 (May 3, 1996), *reconsideration denied*, FAA Order No. 96-23 (August 13, 1996), *petition for review denied*, *Kilrain v. FAA*, No. 96-3587 (3<sup>rd</sup> Cir. May 1, 1997).

maintenance were not made on the squawk sheets. According to the law judge, "it should not be assumed that precise recordkeeping is a trifling matter." (*Id.*)

On appeal, California Helitech argues that it was error for the law judge to rule during the hearing that California Helitech could not introduce evidence that the helicopters were airworthy despite the discrepancies listed on the squawk sheets. The issue arose during cross-examination of one of Complainant's witnesses<sup>8</sup> when the agency counsel objected that there was no need to ask questions about the airworthiness of the helicopters because it was not alleged in the complaint that the aircraft were unairworthy. (Tr. 59-63.) The law judge sustained the objection, and explained his ruling as follows:

[T]he issue is narrowly drawn ..., and I'm not sure we need to go farther ... he's [the agency attorney] not stipulating, but he's conceding for the sake of argument that ... none of these squawks render the aircraft unairworthy. So we don't have to proceed down that line any farther because, again, the essence of the violation ... is that just because they're squawks they should have been addressed by maintenance personnel ....<sup>9</sup>

(Tr. 63.)

In light of that ruling, the law judge went too far when he held that the helicopters were unairworthy when they were operated with open discrepancies.<sup>10</sup> Once the law

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<sup>8</sup> Mr. Bell, California Helitech's president, had been cross-examining Inspector Magill about whether the intercom was required equipment for day operations for these helicopters. (Tr. 56-59.)

<sup>9</sup> In light of this ruling, there was no need for Complainant to prove that the helicopters were not in conformity with their type design due to the discrepancies listed on the squawk sheets. (*See* footnote 5 regarding the definition of airworthiness.)

<sup>10</sup> In determining that the helicopters were unairworthy as a result of the open discrepancies, the law judge relied upon the Administrator's decision in In the Matter of General Aviation, Inc., FAA Order No. 98-18 (October 9, 1998). In that case, the Administrator held that General Aviation had operated an unairworthy aircraft, in violation of 14 C.F.R. § 91.7 in light of the

judge ruled that evidence on the issue of airworthiness would be precluded, it simply was not fair for the law judge to make a finding that the helicopters were unairworthy.

Moreover, it was not necessary for the law judge to rule on the airworthiness of the helicopters because Complainant had not alleged that California Helitech violated Section 91.7, which prohibits any person from operating a civil aircraft unless it is in airworthy condition. Instead Complainant alleged violations only of Sections 91.405(a) and (b), pertaining to the repair of discrepancies and necessary recordkeeping regarding such maintenance and approval for return to service.

Consequently, the law judge's ruling that the helicopters were unairworthy will be reversed. This ruling does not mean that the Administrator finds that the helicopters were airworthy. On the contrary, this ruling indicates narrowly that because Complainant did not plead that the helicopters were unairworthy and because the law judge restricted the introduction of evidence on the issue of airworthiness, no judgment should be rendered on whether the helicopters were indeed unairworthy.

As long as the law judge did not find a violation of Section 91.7 or use the finding of unairworthiness as a factor in determining the appropriate penalty, then his finding of

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aircraft's inoperative fuel gauge. Sections 91.205(a) and (b)(9) require that an aircraft have a working fuel gauge for each fuel tank. It was undisputed that the fuel gauge had not been working properly. The improperly working fuel gauge had been written up in the squawk sheets and the aircraft had been operated despite the fact that the discrepancy listed in the squawk sheet had not been cleared properly. The Administrator stated that "to be airworthy, an aircraft must both conform to its type design and be in a condition for safe flight. (citation omitted.) When an aircraft has unresolved mechanical discrepancies, it does not meet these requirements." (*Id.*, at 12-13.)

In the present case, the issue of airworthiness was basically taken off the table by the law judge when he granted Complainant's motion to preclude evidence regarding airworthiness and by Complainant when a violation of Section 91.7 was not alleged in the complaint. Hence, no determination will be made in this matter regarding whether the helicopters in this case were indeed airworthy. In other words, the applicability of the precedent set in the General Aviation case to the facts of this case will not be decided.

unairworthiness --despite his preclusion of evidence on this issue --is at most harmless error. While the law judge did find based upon the evidence<sup>11</sup> that California Helitech “needlessly increased the risk of unsafe flight” by failing to address the open squawks regarding the bearings and the manifold pressure gauge, he did not find that the proposed sanction was justified because the aircraft were unairworthy. Hence California Helitech was not prejudiced by the law judge’s decision to preclude evidence on the issue of airworthiness.<sup>12</sup>

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<sup>11</sup> The law judge did allow testimony pertaining to potential safety problems of such discrepancies while he limited testimony on the requirement for certain equipment. (*I.e.*, Tr. 115-116, 256.)

<sup>12</sup> On page 7 of its appeal brief, California Helitech argues that the law judge had determined that the aircraft were not unairworthy, and as a result, it withdrew its maintenance manual. It argues further that the maintenance manual would have shown that the discrepancies were within allowable maintenance limits. California Helitech apparently believes that it was prejudiced by the law judge’s ruling because the law judge, in page 4, footnote 2, of the initial decision wrote that California Helitech’s president “claimed that the bearings had not been worn beyond limits (Tr. 107; Exh. C-5) but despite being given a chance to do so, he never produced data to that effect. Tr. 108-09, 153.”

First, as has already been discussed, Complainant did not allege that the helicopters were unairworthy and the law judge clearly understood that whether they were airworthy was not at issue. (*Id.*)

Second, the possibility does exist that the discrepancies were within manufacturer’s limits. Indeed, Complainant acknowledged the possibility that if a properly qualified person inspected those items, it might have been determined that the wear, leak, etc., were within the limits established by the manufacturer of these helicopters. (*I.e.*, Tr. 60; 163.) However, regardless of what the manufacturer’s limits may have been, California Helitech could not prove that the discrepancies were within limits because the helicopters were operated before any qualified mechanics inspected these discrepancies. As the law judge explained in his decision, a pilot is not qualified to perform any maintenance other than preventive maintenance. Therefore, a pilot’s preflight inspection in this case could not satisfy 14 C.F.R. §§ 91.405(a) and (b), because the “type of repairs suggested by the squawks are generally not simple or minor, nor do they involve small standard parts and hence cannot be considered as preventive maintenance.” Initial Decision at 5; (Tr. 65-66; 171.)

California Helitech argued in its appeal brief that Complainant had the burden to prove that the discrepancies were within limits. (Appeal Brief at 13.) California Helitech is mistaken. Complainant introduced ample evidence to prove that there were discrepancies requiring maintenance under Sections 91.405(a) and (b). The argument that any discrepancies were within limits would be an affirmative defense on which California Helitech would have the burden of proof. (14 C.F.R. §§ 13.224(a) and (c).) However, since the question of airworthiness was taken off the table, such an affirmative defense was irrelevant.

California Helitech argued that it was only required to use the squawk sheets for operations under Part 141, and that Complainant failed to prove that the flights in question were Part 141 flights. Hence, according to California Helitech's argument, it was error for the law judge to hold that it had violated Sections 91.405(a) and (b).

This argument must be rejected. It is true that California Helitech was required to use the "squawk sheets" by its manual for flights conducted under Part 141. However, under Part 91, California Helitech was required to repair discrepancies before the next operation and to ensure that maintenance personnel made appropriate entries regarding returning the aircraft to service after maintenance. In other words, while the squawk sheet was a Part 141 form, the requirement to repair and make appropriate entries arose under Part 91.<sup>13</sup> In this case, there was evidence of discrepancies being detected but no inspection or repair. It does not matter that the discrepancies were listed on the Part 141 forms. Regardless of the format of the discrepancy listing, Section 91.405's requirements still apply.<sup>14</sup>

California Helitech argues that it was not required to inspect and repair those discrepancies under its Part 141 manual. This argument is irrelevant because the responsibility for such action, as discussed above, arises under Sections 91.405(a) and (b). Moreover, as many of these discrepancies undoubtedly related to airworthiness, then under California Helitech's manual provision that "any discrepancies relating to aircraft

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<sup>13</sup> See also 14 C.F.R. § 91.1(a) providing that Part 91 applies to all operations of aircraft (with some exceptions not relevant in this matter) within the United States.

<sup>14</sup> As Inspector Brant testified, it makes no difference whether these discrepancies were recorded on squawk sheets developed under Part 141 or mere blank sheets of paper. The discrepancies, regardless of where they are noted, must be inspected and/or repaired, and the aircraft must be approved for return to service. (Tr. 174-175; see also, Tr. 103.)

airworthiness must be signed off by maintenance personnel prior to flight” required the same inspection and/or repair if necessary, and an approval for return to service.<sup>15</sup>

California Helitech argues that the law judge, in interpreting Sections 91.405(a) and (b), held it to the standard for air carriers as set forth in 14 C.F.R. § 121.563. Complainant responded that any similarities between these sections were irrelevant. (Reply Brief at 12.) The Administrator agrees with Complainant that any similarity between Sections 91.405(a) and (b) and 121.563 does not prove that the law judge misinterpreted Sections 91.405(a) and (b).

California Helitech argues in its brief that the law judge erred by granting its request that the witnesses be sequestered (Tr. 9) but then failing to sequester Inspector

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<sup>15</sup> For example, the manifold pressure gauge problem *related* to airworthiness of the aircraft. A manifold pressure gauge for each altitude engine is required for VFR-day, VFR-night, and IFR flights. 14 C.F.R. § 91.205(b)(8), (c)(1) and (d)(1). On cross-examination, Inspector Brant testified that the listed discrepancies could constitute an imminent hazard to the safe operation of the aircraft. (Tr. 115.) Also, Inspector Magill testified regarding the manifold pressure gauge as follows:

All I can tell you with my experience on manifold pressure gauges, they're very indicative of many internal engine problems, and they're also very instantaneous.

When whoever wrote this, a pilot or student wrote this, this could be very indicative of a kinked line or a defective gauge. This is a very legitimate squawk.

(Tr. 256.) Regardless of whether the manifold pressure gauge was actually beyond any manufacturer's limits and rendered the helicopter unairworthy, such a discrepancy *relates* to airworthiness.

California Helitech argues that these discrepancies could not cause the aircraft to be unairworthy in light of the agency attorney's statement at the hearing that “we're not saying anything needed immediate maintenance. (Tr. 211.)” Respondent's Appeal Brief at 9. That too is irrelevant because Complainant did not place airworthiness at issue. The question at issue under Section 91.405(a) moreover, was not whether the aircraft needed *immediate* maintenance, but rather whether it needed maintenance *prior to the next operation*.

California Helitech also argued that its Part 141 manual section concerning maintenance contains a provision permitting deviations from procedures if authorized. This is irrelevant because not only did these obligations arise under Part 91, but also there was no evidence of any authorizations to defer maintenance. Moreover, most of the items listed as discrepancies could not have been deferred under a MEL, even if a MEL for these helicopters existed. (See Tr. 231-236 and 14 C.F.R. §§ 91.205, 91.213 and 91.405(c) and (d).)

Magill who was recalled at the end of the hearing as a rebuttal witness. (Appeal Brief at 20.) Complainant does not contest the assertion that Inspector Magill remained in the courtroom throughout the proceeding and heard the testimony of all the witnesses prior to retaking the witness stand as a rebuttal witness. (Reply Brief at 6.)

California Helitech failed to object when the agency attorney called Inspector Magill as a rebuttal witness. If California Helitech had raised its objection in a timely fashion, the law judge would have had an opportunity to enforce his order and bar Inspector Magill from retaking the witness stand. However, on rebuttal the inspector testified primarily as an expert and not as a percipient witness.<sup>16</sup> Hence, there would have been little, if any, need to have sequestered him.

California Helitech argues on appeal that the law judge relied upon inapplicable case law in his initial decision. This argument is rejected. Judge Kolko made appropriate use of civil penalty case precedent. For example, he cited In the Matter of Delta Airlines, FAA Order No. 97-21 at 2 (May 28, 1997) for the general proposition that “conformance with type design is a component of airworthiness.” (Initial Decision at 3.) That statement is consistent with language in the FAA’s authorizing statute.<sup>17</sup> Likewise, the law judge cited In the Matter of Watts Agricultural Aviation, FAA Order No. 91-8 at 15-16 (July 5, 1991)<sup>18</sup> for the general proposition that “[a]gency inspectors must be able to

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<sup>16</sup> His only testimony on rebuttal involving factual matters was elicited on cross-examination by California Helitech’s president. Mr. Bell asked Inspector Magill questions about why he had left the airport after his inspection. Inspector Magill’s other remaining rebuttal testimony was expert testimony.

<sup>17</sup> 49 U.S.C. § 44704(c)(1).

<sup>18</sup> *Review denied, Watts Agricultural Aviation, Inc., v. Busey, reported as table case at 977 F.2d 594, full text slip opinion reported at 1992 U.S. App. LEXIS 27483 (D.C. Cir. 1992).*

determine from the records whether required maintenance has been timely performed.” (Initial Decision at 5.) This statement reflects accurately the basis of much of the FAA’s surveillance and enforcement activities for all types of aviation operations.

To the extent that the law judge relied upon the General Aviation case in finding that the helicopters were unairworthy, this was improper because of the law judge’s ruling prohibiting argument and introduction of evidence on the issue of airworthiness. In contrast, his reliance on the General Aviation case for its discussion about general principles involving preventive maintenance and recordkeeping<sup>19</sup> was appropriate. The General Aviation case was very similar to the instant case because the violations that were alleged were also under Part 91, and both cases involved aircraft operations with open squawks. Also, General Aviation, like California Helitech, provided pilot training.

California Helitech’s argument on appeal that the \$2,200 civil penalty is excessive in light of its voluntary surrender of its Part 141 pilot school certificate is not compelling. A civil penalty has both deterrent and punitive purposes. The need for a sanction with a punitive and deterrent effect is not obviated by California Helitech’s voluntary surrender of its pilot school certificate. The voluntary surrender does not change the fact that California Helitech operated two different helicopters with open squawks, not even bothering to have a qualified individual check them out, let alone make any necessary repairs for discrepancies beyond limits. Hence, a civil penalty with a punitive impact is

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<sup>19</sup> For example, the law judge wrote, referring to the General Aviation decision: “To suggest, in fact, that a record of an aircraft’s mechanical discrepancies is not a maintenance record, the Administrator has said, ‘would defy logic’ and would be ‘contrary to the public interest in safe skies.’” (Initial Decision at 4.) Again referring to the General Aviation decision, the law judge wrote: “preventive maintenance is defined generally as ‘simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.’” (Initial Decision at 5.)

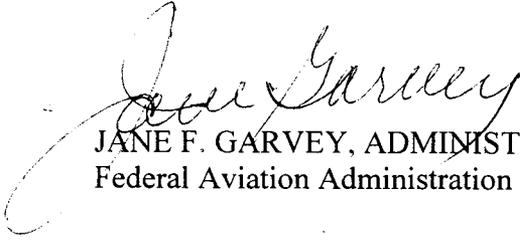
appropriate. Moreover, just because California Helitech surrendered its pilot school certificate does not mean that it is precluded from applying for another pilot school certificate in the future. *See* 14 C.F.R. Part 141.

The \$2,200 civil penalty assessed by the law judge was reasonable under the circumstances of this case. California Helitech operated two helicopters with unresolved maintenance discrepancies, including reports that the manifold pressure gauge was slow to respond, the main and tail rotor bearings were worn, and the main rotor may be out of its track (based upon a “pronounced vibration when the helicopter is in forward flight.) While it is possible that if a qualified individual had inspected the helicopters, he would have found that these items were within limits, it is also possible that it would have been determined that these items were *not* within limits. Hence, flying without resolving the discrepancies listed on the squawk sheets unnecessarily decreased the required safety margin for these two helicopters. In addition, Mr. Bell’s attitude, as revealed by his statement that he would stop training pilots to write up maintenance discrepancies, is very troubling and constitutes an aggravating factor. (Tr. 113, *see also* Tr. 244.) In light of these factors, a \$2,200 civil penalty for the flights by the two helicopters with unresolved maintenance discrepancies and no approval for return to service<sup>20</sup> is reasonable.

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<sup>20</sup> As stated in Watts Agricultural Aviation at 15-16, “[a]ccurate recordkeeping is the linchpin behind the FAA’s regulatory scheme ....”

In light of the foregoing, the law judge's initial decision, assessing a \$2,200 civil penalty is affirmed except as specifically noted in this decision.<sup>21</sup>

  
JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 11th day of August, 2000.

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<sup>21</sup> Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2)(2000.)