

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

**WARBELOW'S AIR
VENTURES, INC.**

FAA Order No. 2000-14

Served: June 8, 2000

Docket No. CP97AL0012

ORDER DENYING RECONSIDERATION¹

The instant case involves allegations that Warbelow's Air Ventures, Inc. (Warbelow's), an Alaskan air carrier, operated several of its Piper aircraft in an unairworthy condition – two with an improperly modified fuel pump, and a third with a missing antenna for the emergency locator transmitter (ELT).

The law judge found that Warbelow's violated regulations that prohibit operating:

(1) unairworthy aircraft;² and (2) aircraft with inoperable instruments or equipment.³

¹ The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. 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. 1654, 1671 (January 11, 2000).

² 14 C.F.R. §§ 91.7(a) provides: "No person may operate a civil aircraft unless it is in an airworthy condition."

14 C.F.R. § 135.25(a)(2) provides: "(a) [N]o certificate holder may operate an aircraft under this part unless that aircraft -- ... (2) Is in an airworthy condition and meets the applicable airworthiness requirements of this chapter, including those relating to identification and equipment."

³ 14 C.F.R. § 135.179(a)(1) provides: "No person may take off an aircraft with inoperable instruments or equipment installed unless the following conditions are met: (1) an approved Minimum Equipment List exists for that aircraft."

Although Complainant sought a \$20,000 civil penalty, the law judge assessed \$5,500. Both parties appealed the law judge's initial decision. Warbelow's appealed the finding of violations, while Complainant appealed the sanction amount.

In FAA Order No. 2000-3, served on February 3, 2000, the Administrator denied Warbelow's appeal and affirmed the law judge's findings of violations. The Administrator raised the civil penalty from \$5,500⁴ to \$6,500 so that the penalty would be consistent with the agency's sanction guidance.⁵ The Administrator declined Complainant's request to raise the sanction to \$20,000, stating instead that a \$6,500 would suffice to deter future violations.

On March 6, 2000, Warbelow's filed a timely petition to reconsider FAA Order No. 2000-3,⁶ arguing that the Administrator erred in affirming the fuel pump violations.⁷ Specifically, Warbelow's renews two of its previous arguments. First, Warbelow's challenges the credibility of the testimony of its former Director of Maintenance, Scott Rimer. In his testimony at the hearing, Rimer indicated that he failed to ensure that the screws were torqued to the proper pressure. Warbelow's contends that Rimer's testimony lacks credibility because he was a disgruntled former employee, having been

⁴ The law judge assessed \$2,500 for each of two fuel pump violations, and \$500 for the emergency locator transmitter violation.

⁵ Specifically, the guidance contained in FAA Order No. 2150.3A.

⁶ 14 C.F.R. § 13.234(a) permits parties to petition the Administrator to reconsider or modify a final decision and order within 30 days after service on the parties. Under 14 C.F.R. § 13.211(e), Warbelow's had an additional 5 days to file its petition to reconsider because the Administrator served FAA Order No. 2000-3 by mail.

⁷ Warbelow's does not challenge the finding of violation regarding the emergency locator transmitter.

demoted and ultimately fired for modifying the pumps. Second, Warbelow's again argues that the pumps must have been torqued to the proper pressure because they did not leak in service. Neither of these arguments is new; they were both raised and decided both by the law judge in his initial decision and by the Administrator in FAA Order No. 2000-3.⁸

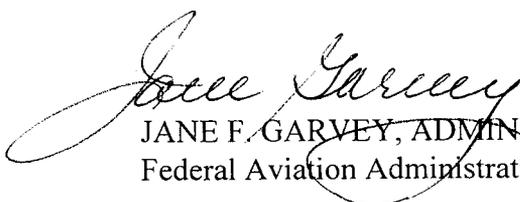
The only new argument in Warbelow's petition to reconsider is its challenge to the factual accuracy of the following statement in FAA Order No. 2000-3 regarding Rimer's credibility: "Warbelow's demoted and fired Rimer *after* Rimer admitted to the FAA inspectors that he had been using an improper method to modify the fuel pumps." (FAA Order No. 2000-3 at 12; emphasis in original.) Warbelow's is correct that it actually fired Rimer *before* he indicated at the hearing that he failed to use a torque wrench to ensure the proper pressure on the fuel pump screws.⁹ This factual error in FAA Order No. 2000-3, however, does not affect the outcome of this case. As stated in the same order, "[a] law judge's credibility determinations are entitled to deference on appeal because the law judge was able to observe the witnesses' demeanor at the hearing." In the Matter of Warbelow's Air Ventures, FAA Order No. 2000-3 at 12 (February 3, 2000) (citing In the Matter of Squire, FAA Order No. 1999-6 at 7 (August 31, 1999) and other precedent). The law judge was well aware of Rimer's possible motives to misrepresent how he reassembled the fuel pumps, and yet the law judge specifically stated in his initial

⁸ The Rules of Practice provide that the Administrator may summarily dismiss repetitious petitions to reconsider. 14 C.F.R. § 13.234.

⁹ Rimer testified at the hearing on May 22, 1998, that he was fired in the summer of 1997. (Tr. 27.)

decision that he believed Rimer's testimony. The law judge stated: "... on the basis of Mr. Rimer's testimony – *which I credit* – that, in effect, he has no idea whether [the] torque values were complied with, the modified pumps cannot be considered safe, albeit that they never leaked in service." (Initial Decision at 14; emphasis added.) Warbelow's has failed to provide sufficient grounds to overturn the law judge's credibility determinations, which were based on his personal observations of the witnesses.

THEREFORE, Warbelow's petition to reconsider is denied, and a \$6,500 civil penalty is assessed.¹⁰


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 8th day of June, 2000.

¹⁰ Warbelow's asks the Administrator to stay the time for it to seek judicial review. (Petition to Reconsider at 7.) While the Administrator lacks the statutory authority to stay the time for seeking judicial review of FAA Order No. 2000-3, Warbelow's may seek judicial review of the instant order and decision under 49 U.S.C. § 46110. Under 49 U.S.C. § 46110, a petition for review of an FAA order must be filed with a Court of Appeals of the United States within 60 days after the order is issued.