

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of:

THOMAS H. KILRAIN

FAA Order No. 96-18

Served: May 3, 1996

Docket No. CP94NE0268

DECISION AND ORDER

Respondent Thomas H. Kilrain has appealed from the oral initial decision issued by Administrative Law Judge Robert T. Barton on April 18, 1995.¹ The law judge held that Mr. Kilrain violated Sections 43.5(a)² and 43.15(a)(1)³ of the Federal Aviation Regulations (FAR), 14 C.F.R. §§ 43.5(a) and 43.15(a)(1). The law judge affirmed the \$500 civil penalty sought by the Federal Aviation Administration (FAA) ("Complainant"). For the reasons set forth below, the law judge's decision is affirmed.

¹ A copy of the law judge's oral initial decision is attached.

² Section 43.5(a) of the FAR provides as follows:

No person may approve for return to service any aircraft, airframe, aircraft engine, propeller, or appliance, that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless -- (a) The maintenance record entry required by § 43.9 or § 43.11, as appropriate, has been made[.]

14 C.F.R. § 43.5(a). See note 5.

³ Section 43.15(a) provides as follows:

(a) *General.* Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall --

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements. . . .

14 C.F.R. § 43.15(a)(1).

Thomas Kilrain is the holder of a mechanic certificate with airframe and powerplant ratings and inspection authorization privileges. He performed an annual inspection on civil aircraft N1547R, a Grumman American model AA-5B, on July 1, 1990. On August 20, 1993, the aircraft was involved in an accident. (Tr. 31.) During the investigation of the accident, a question arose as to whether Mr. Kilrain had returned the aircraft to service after the annual inspection without having ensured that the work required by Airworthiness Directive (AD) 89-18-08⁴ had been performed.⁵

AD 89-18-08, which became effective on September 21, 1989, applied to Grumman American aircraft, including the Grumman American, model AA-5B. The airworthiness directive called for inspection of the fuel tanks, fuel system and

⁴ AD 89-18-08 provides as follows:

GULFSTREAM AEROSPACE CORPORATION: Amendment 39-6307.

Applicability: Gulfstream Aerospace Models AA-5, AA-5A, AA-5B, and GA-7 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude fuel tank/fuel system contamination caused by deterioration of fuel tank access cover sealant, accomplish the following:

(a) Inspect the fuel tanks, fuel system, and the electric fuel pump filter for fuel tank sealant contamination in accordance with the instructions specified in Gulfstream Aerospace Corporation (GAC) Service Bulletin (SB) No. 176, dated July 26, 1989, or GAC S/B No. ME 22, dated July 26, 1989, as applicable. If contamination is detected, prior to further flight clean the fuel system and all fuel system components in accordance with the instructions in the above listed applicable GAC S/B.

(b) Reseal the fuel tank access covers using high-octane fuel resistant sealant per the instructions in the applicable GAC S/B listed in paragraph (b) of this AD. . . .

This amendment . . . becomes effective on September 21, 1989.

Complainant's Exhibit D.

⁵ Kilrain admitted that he violated Section 43.5(a) of the FAR, 14 C.F.R. § 43.5(a), when he returned N1547R to service because he failed to make the appropriate record entry required by Section 43.11, 14 C.F.R. § 43.11.

electric fuel pump filter for access cover sealant contamination.⁶ As explained by FAA Inspector Wayne Seer, AD 89-18-08 required inspection of the fuel system for fuel sealant contamination within 25 hours time-in-service of the airworthiness directive's effective date. The inspection mandated by AD 89-18-08, he explained, was to be performed in accordance with the instructions set forth in Gulfstream Aerospace Corporation⁷ Service Bulletin No. 176 (Service Bulletin No. 176).⁸

⁶ An airworthiness directive is notification by the FAA of an unsafe condition found in an aircraft. It provides the action which must be taken to correct the unsafe condition. (Tr. 23.)

⁷ Based on corporate ownership, Gulfstream Aerospace Corporation published the service bulletin applicable to the Grumman American Model AA-5B.

⁸ Gulfstream Aerospace Corporation Service Bulletin 176 provides as follows:

SUBJECT: Integral fuel tanks - inspection for deteriorated access cover sealant and fuel system contamination.

MODEL/SERIAL NUMBERS AFFECTED: All AA-5, AA-5A and AA-5B aircraft that have not incorporated service kit 140A.

COMPLIANCE: This service bulletin is considered by Gulfstream Aerospace Corporation to be mandatory and must be incorporated within 25 flight hours or 3 months, whichever occurs first.

GENERAL: Service Kit 140A for the AA-5 Series aircraft revised the fuel tank access cover sealant from PR-1321 to PR-1403, a high-octane fuel compatible sealant. . . .

This bulletin provides instructions and procedures for the inspection, cleaning and resealing of integral fuel tank access covers on the affected AA-5, AA-5A and AA-5B aircraft. . . .

INSTRUCTIONS.

2. Inspection Procedures - Fuel Tanks

- a. Defuel tank and/or tanks to be inspected per Maintenance Manual procedures.
- b. Remove access covers. Retain hardware for reuse.
- c. With tank/tanks open, purged and properly ventilated, inspect all areas inside tanks for contamination due to access cover sealant deterioration. Pay particular attention to the finger strainers and drain areas.
- f. Remove all existing old sealant from tank access covers. . . .

Inspector Seer testified that the inspection set forth in Service Bulletin 176, which was issued July 26, 1989, involved the removal of the fuel tank access covers on the fuel tanks, and the inspection of the fuel system for contamination, including an inspection inside the fuel tanks. In addition, he explained, the Service Bulletin necessitated that the old access cover sealant be removed and replaced with fuel tank sealant PR-1403, which is a high-octane fuel resistant sealant. This work, he explained, was necessary for both the right and left fuel tanks. (Tr. 27.)

Inspector Seer noted a logbook entry dated December 1, 1989, indicating that an oil change had been accomplished on aircraft N1547R at 2335.76 hours. He also noted Mr. Kilrain's June 1, 1990, logbook entry indicating performance of an annual inspection on N1547R at 2379.1 hours, at which time Mr. Kilrain approved the aircraft for return to service. (Tr. 42-43.) Inspector Seer observed that there was no entry indicating compliance with AD 89-18-08. (Tr. 41, 43, 44-45.)

According to Inspector Seer, Mr. Kilrain told him that the requirements of AD 89-18-08 had been accomplished when Flying Tigers, Inc., worked on the aircraft prior to the issuance of the airworthiness directive. (Tr. 41, 47.) Inspector Seer concluded, however, based upon a review of records sent to him by Flying Tigers, that Flying Tigers had only resealed the left fuel tank. (Tr. 48.) He stated that in his opinion, the work performed by Flying Tigers did not satisfy the

g. Reseal access covers per Service Kit 140A or the following procedure:

1. Apply PR-1403 Access Cover Sealant to wing mating surface in layer of 1/32" or 1/16" thick. . . .

Complainant's Exhibit C.

requirements of AD 89-18-08 because it did not encompass all of the access covers. (Tr. 49-50, 69-70.)

Bruce Wilbur, owner of the aircraft at the time of the annual inspection, testified that he had told Mr. Kilrain that Flying Tigers had resealed the left fuel tank due to fuel leaks prior to the issuance of the airworthiness directive. (Tr. 73, 77-78.) Mr. Wilbur also testified that Flying Tigers had inspected the right fuel tank for access cover sealant contamination subsequent to the issuance of Service Bulletin No. 176 and had found that the sealant in the right tank had been replaced. (Tr. 73, 80-81.) Mr. Wilbur further testified that he was not present while Flying Tigers worked on his aircraft, and he did not know whether Flying Tigers had removed any of the access panels. (Tr. 82.)

Mr. Kilrain testified that he talked with Bruce Wilbur about the requirements of AD 89-18-08 and the work previously accomplished by Flying Tigers. He explained that he told Mr. Wilbur that he would reinspect the entire system for sealant contamination. (Tr. 88.)

Mr. Kilrain testified that in following the requirements of AD 89-18-08, he checked the sumps, pulled the fuel pump and screen, and drained the carburetor. (Tr. 89, 92.) He testified, however, that he did not open any access panels or reseal them. (Tr. 93, 96-97.) He explained that he inspected the sealant for deterioration by inserting a paint stirring stick through the filter nozzle and poking at the sealant. He said that the sealant on the right tank had the same texture as that on the left tank. (Tr. 92.) He also stated that he could tell from his examination of the right tank that it had been opened before his inspection. (Tr. 95, 97.)

He explained that he went no further in following the directions of the airworthiness directive and service bulletin because, as he interpreted the

airworthiness directive, no further action was required. (Tr. 98-99.) Mr. Kilrain argued that the term "as applicable" in section (a) of the airworthiness directive⁹ referencing Service Bulletin No. 176 meant that only if contamination is found should the system be opened and thereafter sealed. According to Mr. Kilrain's interpretation of the airworthiness directive, if no contamination in the fuel system was found, then section (b) of the airworthiness directive need not be followed and the aircraft could be returned to service without further work. Mr. Kilrain testified that when he found no evidence of contamination during his inspection, he had no justification to go further and open the fuel tank access covers. (Tr. 98-99.)

Mr. Kilrain testified that, upon completion of the annual, he told Mr. Wilbur to take the logbooks back to Flying Tigers for completion of the entry indicating compliance with AD 89-18-08. (Tr. 93-94.)

The law judge found that Mr. Kilrain violated Sections 43.5(a) and 43.15(a)(1) as cited in the complaint. According to the law judge, the airworthiness directive required inspection of the fuel tanks, fuel system and the electric fuel pump filter for access cover sealant contamination in accordance with the instructions specified in Service Bulletin No. 176. He further found that compliance with Service Bulletin No. 176 required the removal of the fuel tank access covers. The law judge rejected Mr. Kilrain's argument that the phrase "as applicable," as it appeared in the airworthiness directive, gave discretion as to which procedures could be followed. The law judge held that the airworthiness directive specifically incorporated Service Bulletin No. 176 and that the bulletin's instructions were very clear. The law judge further held that the evidence was not credible that the work

⁹ See footnote 4 for the text of the AD.

previously performed by Flying Tigers was in accordance with Service Bulletin No. 176.

On appeal, Mr. Kilrain has renewed the arguments he raised at the prehearing conference and the hearing regarding his compliance with AD 89-18-08. In response to the appeal, Complainant maintains that AD 89-18-08 applied to aircraft N1547R, and that Mr. Kilrain failed to comply with the airworthiness directive prior to returning the aircraft to service after the annual inspection. In its reply brief, Complainant argues that Mr. Kilrain's interpretation of the phrase "as applicable" as used in section (a) of AD 89-18-08 was erroneous. Complainant maintains that, because the phrase "as applicable" follows references to two service bulletins, a logical reading is that the phrase was intended to mean that either bulletin "was applicable" depending on the model of aircraft being inspected.

The issue on appeal is whether the aircraft met the requirements of AD 89-18-08 when Mr. Kilrain returned it to service following the annual inspection accomplished on July 1, 1990. If the aircraft was not in compliance with the airworthiness directive, then Mr. Kilrain returned the aircraft to service without properly determining whether the aircraft met all applicable airworthiness requirements.

The law judge did not err in finding that Mr. Kilrain violated Section 43.15(a)(1). AD 89-18-08 required inspection of Grumman American, model AA-5B, aircraft for evidence of fuel tank access cover sealant contamination. The airworthiness directive required compliance within the 25 hours time-in-service following September 21, 1989, the effective date of the airworthiness directive. At the time Mr. Kilrain performed the annual inspection on aircraft N1547R, the aircraft had exceeded the time-in-service limitation, therefore obligating Mr. Kilrain

to determine whether the requirements of AD 89-18-08 had been accomplished prior to returning the aircraft to service.

The airworthiness directive provides in pertinent part as follows:

(a) *Inspect the fuel tanks, fuel system and the electric fuel pump filter for fuel tank sealant contamination in accordance with the instructions specified in Gulfstream Aerospace Corporation (GAC) Service Bulletin (SB) No. 176, dated July 26, 1989, or GAC S/B No. ME 22, dated July 26, 1989, as applicable. If contamination is detected, prior to further flight clean the fuel system and all fuel system components in accordance with the instructions in the above listed applicable GAC S/B.*

(b) *Reseal the fuel tank access covers using high-octance fuel resistant sealant per the instructions in the applicable GAC S/B*

(Emphasis added.)

Thus, under paragraph (a) of AD 89-18-08, the fuel tanks, fuel system, and electric fuel pump filter must be inspected for fuel tank sealant contamination, in accordance with either Service Bulletin No. 176 or Service Bulletin No. ME 22. Service Bulletin No. 176 applied to all Models AA-5B, and therefore, it applied to N1547.¹⁰ The inspection described in Service Bulletin No. 176 included removing the fuel tank access covers, and removing all existing old sealant. Paragraph (a) of the airworthiness directive requires cleaning of the fuel tanks only if contamination was found. However, regardless of whether there is any fuel tank contamination detected during the inspection, the fuel tank access covers must be resealed using high-octane fuel resistant sealant as specified in the Service Bulletin. In other

¹⁰ Mr. Kilrain's argument regarding the meaning of the phrase "as applicable" in paragraph (a) of AD 89-18-08 is unpersuasive. As Complainant argued, a logical reading of the airworthiness directive does not support Mr. Kilrain's interpretation. AD 89-18-08 incorporates both Service Bulletin No. 176 and Service Bulletin No. ME 22. The phrase "as applicable" as it is used in the airworthiness directive does not permit compliance with only certain procedures. Instead, "as applicable" directs that either one of the two service bulletins, depending on the model of aircraft being inspected, be followed.

words, paragraph (b) of the airworthiness directive does not make resealing the tanks contingent upon a finding of fuel tank contamination.

AD 89-18-08, as it incorporates Service Bulletin No. 176, is clear that both parts (a) and (b) must be accomplished. Service Bulletin No. 176 also necessitates that the inspection of the fuel tanks includes removal of the access covers, an inspection inside the fuel tanks, removal of all sealant, and resealing the access covers with PR-1403 sealant.

Mr. Kilrain's defense that the airworthiness directive was complied with based on the work performed by Flying Tigers prior to the annual inspection performed by Mr. Kilrain was not supported by the evidence. While Bruce Wilbur testified that he told Mr. Kilrain that Flying Tigers had resealed the left fuel tank and inspected the right fuel tank for contamination, he acknowledged that he did not know the extent of the work accomplished because he had not observed the work when it was performed. Additionally, in response to the investigation, Flying Tigers provided a statement that the work performed on N1547R was limited to the left side and that the work was performed on January 13, 1989, prior to the issuance of both AD 89-18-08 and Service Bulletin No. 176.¹¹ The law judge concluded that the

¹¹ Complainant submitted as evidence a letter written to Inspector Seer by Jay Stout, Flying Tigers, Inc., dated November 15, 1994. In the letter, Mr. Stout wrote:

Please find enclosed a copy of Flying Tigers Inc. Work Order and corresponding invoice dated 13 January 1989. This work order details work completed to the left tank of Tiger N4547R.

As you can see the work was limited to the left side only. While the plates were sealed using PRC brand PR-1403 B sealant, neither SB 176 or Airworthiness directive 89-18-08 were complied with because the effective dates of these two documents are 7-26-89 and 9-21-89 respectively.

(Emphasis added.)

evidence that Flying Tigers had performed the required work on both tanks was not credible, and there is no reason to disturb that credibility assessment. Thus, the preponderance of the evidence here indicates that the work required by the airworthiness directive was not performed on both tanks of N1547R prior to the annual inspection.¹²

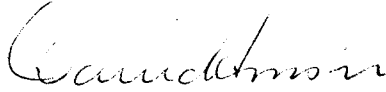
To be airworthy, an aircraft must 1) conform to a type design approved under a type certificate or supplemental type certificate and to applicable Airworthiness Directives; and 2) be in a condition for safe operation. In the Matter of America West Airlines, FAA Order No. 96-3 at 29 (February 13, 1996); In the Matter of Horizon Air Industries, FAA Order No. 95-11 at 12, note 3 (May 10, 1995).¹³ Section 43.15(a)(1) requires that each person performing an inspection shall determine that the aircraft meets all airworthiness requirements, which includes all applicable airworthiness directives. When Mr. Kilrain returned N1547R to service, the aircraft did not meet all of its airworthiness requirements, and therefore, he violated Section 43.15(a).

Based on the above, Mr. Kilrain's appeal is denied. The preponderance of the evidence supports the law judge's finding that Mr. Kilrain returned the aircraft to service in an unairworthy condition because not all of the requirements of

¹² The agency attorney stated during closing argument that "[a]t this point, the FAA is not really contesting the work that was done to the left tank, the issue really is the right tank" (Tr. 106.)

¹³ See Administrator v. Doppes, 5 NTSB 50, 52 (1985).

AD 89-18-08 had been met. Accordingly, the decision of the law judge is affirmed, and a civil penalty in the amount of \$500 is assessed.¹⁴



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 3rd day of May, 1996.

¹⁴ Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. § § 13.16(b)(4) and 13.233(j)(2) (1994).