Federal Aviation Administration

Memorandum

Date: April 22, 2016

To: John S. Duncan, Director, Flight Standards Service, AFS-1
Thru: Van Kerns, Manager, Regulatory Support Division, AFS-600
Tim Shaver, Manager, Aircraft Maintenance Division, AFS-300

From: Nicholas Reyes, Manager, Flight Standards Division, AWP-200

Prepared by: John A. Blanco, Manager, Los Angeles FSDO, AWP-23

Subject: Request to Withdraw Notice 8900.319

On August 8, 2015, Notice 8900.319 was issued directing the reexamination of persons holding mechanic certificates with airframe and/or powerplant ratings tested by Designated Mechanic Examiner (DME) Randal B. McKinley. In December 2014, it was discovered that the procedures and scoring methods used by McKinley in administering the oral test portion may have been inconsistent with the procedures and standards outlined in FAA Order 8900.2. The basis for this finding centered on an agency review of "Test Planning Sheets" submitted by McKinley.

Prior to initiating any reexaminations under the Notice, a series of discussions took place between responsible offices within the Flight Standards Service (AFS) and personnel of the Office of Chief Counsel regarding the scope of the reexaminations. These discussions revealed a clear difference of opinion with regard to the proper scope of reexaminations, causing a more deliberate and comprehensive review of the facts and circumstances surrounding the McKinley Notice. At issue was the position by personnel of the Office of Chief Counsel insisting that every applicant processed by McKinley would require reexamination in all subject areas, as opposed to the Flight Standards position that reexamination would be initiated only those airmen for which the agency possessed records reflecting a less than seventy (70) percent passing mark for one or more subject area of the oral examination. These discussions caused Flight Standards to reevaluate the Notice and the basis for reexamination in its entirety.

Our review concluded that the McKinley case was unlike previous DME fraud or misconduct cases in several relevant areas, and the remedies applied to those previous cases (St. George, Tobias, Lane, etc.) should not be applied in this case. Foremost, there was no intentional falsification or fraud identified with McKinley. Rather the agency's investigation disclosed that testing indeed occurred, but the recording of results may have been inconsistent with established

policy guidelines. These tests, in all likelihood, still resulted in a legitimate assessment of the applicants "basic skill" and eligibility for the rating(s) sought (14 CFR part 65.79), and the agency possess no records, evidence, or testimony to the contrary. It is important to point out that while there were inconsistencies identified with the mathematical scoring on McKinley's test planning sheets, agency guidance provides now, and has always provided that an examiner be objective in evaluating the applicant's skill and knowledge, and allows the examiner to ask additional exploratory questions to verify the applicant's understanding of the subject area, but will not be considered (or documented) as part of the test.

Additional concerns involve conflicting evidence in the agency's possession, specifically the Test Planning Sheets and corresponding FAA Form 8610-2 Airman Certificate and/or Rating Application for each airman tested by McKinley. Each applicant who's Test Planning Sheet contains markings that reflect a less than a 70 percent pass rate for one or more subject area has a corresponding Application that reflects that the applicant passed each subject area. In this case, the Administrator has the burden to prove that the applicant did not meet the basic skills under 65.79, or has good cause to believe the applicant does not, along with ample evidence to support that position. The Test Planning Sheets do not include Pass/Fail determination, the application serves as the form and manner in which the applicant applies, and where the DME records the results of his or her objective determination under 14 CFR part 65.79 regarding the applicants basic skill and knowledge.

In context, the pass/fail results for McKinley was fairly consistent with the national averages

- McKinley - FY09 89.19% (49 applicants) / All DMEs – 85.40%
- McKinley - FY11 84.60% (43 applicants) / All DMEs – 84.20%
- McKinley - FY12 81.40% (43 applicants) / All DMEs – 83.30%
- McKinley - FY13 87.50% (12 applicants) / All DMEs – 80.70%
- McKinley - FY14 100% (17 applicants) / All DMEs – 81.90%

The fundamental underpinning for the agency's decision to issue Notice 8900.319 was the interpretation by FAA personnel of McKinley's Test Planning Sheet markings. In his statement, McKinley suggests that he asked additional questions as provided in the prevailing guidance that may have been the basis for his objective assessment of the applicants understanding of the subject area. As discussed previously, provisions in both FAA Order 8610.4 (former) and 8900.2 (current) provide for examiner discretion in asking additional exploratory questions (not considered part of the test) to determine the applicants understanding of the subject area.

These issues cause concern over the reliability of the evidence, and whether the evidence in the agency's possession serves as good cause and to what it extent it serves as "ample evidence" to prove that the airman did not demonstrate the basic skill required under 14 CFR part 65.79. Clearly, the interpretation of Test Planning Sheets by FAA personnel could not be considered direct evidence, and FAA personnel could only provide expert testimony as to the markings on the Test Planning Sheets.

From a risk management standpoint, it should be noted that effective controls exist within the Federal Aviation Regulations to ensure that personnel have performed work at an earlier date and

possess recent experience (14 CFR parts 65.81 and 65.83). As a result, any safety impact to the National Airspace System (NAS) would be negligible; as those not engaged in aviation maintenance present no risk, and those exercising the privileges of the certificate will in most (if not all) cases have received appropriate additional training and experience.

Consideration was also given to the potential release of the Pilots Bill of Rights (PBR) II. While PBR II has not been promulgated as law currently, and the present language does not address Mechanic Examiners, it reveals the position of lawmakers with regard to large reexamination efforts undertaken by the FAA, and if applied to McKinley, it would likely prohibit our reexamination given the factual circumstances.

In summary, personnel of the Los Angeles Flight Standards District office, in consultation with the responsible policy divisions completed a comprehensive review of the circumstances surrounding McKinley and previous reexamination efforts and as a result, request that Notice 8900.319 be withdrawn. This review was anchored in regulation and policy, considered all of the available evidence, and was informed by the lessons of all prior and current reexamination efforts.

Concur: _____

Non-concur: _____

John S. Duncan

Director, Flight Standards Service, AFS-1

5.25.16

Date