SERVED: April 15, 1998

NTSB Order No. EA-4651

UNITED STATES OF AMERICA NATIONAL TRANSPORTATION SAFETY BOARD WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD at its office in Washington, D.C. on the 7th day of April, 1998

JANE F. GARVEY, Administrator, Federal Aviation Administration,

Complainant,

Docket No. SE-13828

ROBERT C. PEACON,

Respondent.

ORDER DENYING RECONSIDERATION

Respondent has filed a petition requesting reconsideration, rehearing, and modification of NTSB Order No. EA-4607. The Administrator has filed a brief in reply, urging dismissal of the petition. For the reasons that follow, we deny the petition.

In NTSB Order No. EA-4607, we granted the Administrator's appeal and reversed the sanction imposed by the law judge. We imposed a 90-day suspension of respondent's ATP certificate. The respondent did not appeal the findings of fact or the findings of law that were made by the law judge. Moreover, respondent did not dispute the facts in his reply to the Administrator's appeal. The law judge's findings were specifically affirmed by the Board. *Id.* at 16.

Rule 821.48(c) of the Board's Rules of Practice in Air Safety Proceedings, 49 C.F.R. § 821.48(c), makes clear that any error contained in the initial decision which is not objected to

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on appeal may be deemed to have been waived. Since respondent did not appeal the law judge's initial decision, the merits of the Administrator's case may not be challenged here. Administrator v. Hamilton, NTSB Order No. EA-3583 at 2 (1992).¹ As the Board noted in Administrator v. Lambert, 4 NTSB 1373 (1984), a respondent may not use a petition for reconsideration as a vehicle for making contentions that should have been, but were not, made on appeal.²

To the extent that respondent's petition challenges the basis for the Board's imposition of a 90-day suspension, we have considered his arguments and, in our view, they do not compel any modification of our decision.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

¹Respondent criticizes the Board for not "directly confronting" the provisions of FAR § 91.705(a). The content of the regulations were not in issue, because respondent failed to challenge them.

²Nor will we consider the written statement of a witness that was attached to respondent's petition, since he offers no explanation whatsoever why the statement could not be introduced at the time of the hearing.